The Central Law Journal.

ST. LOUIS, JUNE 18, 1886.

CURRENT EVENTS.

EXEMPTION LAWS AND CHATTEL MORTGAGES.—Exemption laws have usually been regarded as legislation highly favorable and beneficent to the laboring poor, as assuring at least *something* against all the casualties of life, and all the processes of the law. At a bar association meeting in Arkansas a paper was read in which the writer takes the ground, and supports it with great ability, that the exemption law is a mistaken kindness, that it wrecks the credit of the poor man, that it does not enable him to go upon a cash basis, but forces him into the hands of the usurer. And the further charge is made against this apparently liberal and salutary line of legislation, that it has stimulated and fostered the pernicious system of chattel mortgages, and in many parts of the country, practically created it.

Speaking of his own State, Arkansas, Mr. Coffin says that one of the results of the exemption law is, that the assets of the debtor subject to execution, being so greatly limited by its operation, the creditor selling goods on credit, or lending money, raises the price of his goods, or the rate of interest on his money, to cover the additional hazard which he encounters; and if the debtor pays at all, he pays more than he can afford for the goods, or an exorbitant rate of interest for the money.

The effect of it all is, that the creditors are under a constant temptation to become extortioners, and, on the other hand, the debtors, when the immediate pinch is over, revolt against the hard terms to which they have submitted, and, upon any appearance of probable disaster, are easily led into whatever form of fraudulent device to defeat their creditors, may appear feasible.

The chattel mortgage so prevalent in the Southern States seems to be the natural consequence of this state of things. The would-be creditors, not satisfied with the very limited personal responsibility of his would-be debtor, exacts a mortgage as a further security, which, in the language of Mr. Coffin, "usually covers everything the mortgagor has in sight, with a draft on futurity, and all its possibilities."

Mr. Coffin adds indignantly: "And thus the poor debtor becomes a slave, not so much to his own necessities as to the law, and bound hand and foot, as it were, without crime, is stripped of the refuge that was built for him, and drained of his sweat and blood to meet the exactions of the day, certain to come, when his relentless creditor shall sit in judgment and pronounce him guilty of shortness of crops, and consequently of purse, and condemn him to another period of involuntary servitude under a bill of sale executed by himself."

He adds with emphasis and indignation: "And all this in the face of a constitutional provision which declares that he should have personal property to a certain value, to be selected by himself, exempted from execution; and another which says: 'There shall be no involuntary servitude except as a punishment for crime.'"

There seems to be two sides of this question of exemption. Legislation may protect the improvident against some modes of oppression, but, unless great care is taken, when one door has been closed, another opens. The old song says: "Love will find out the way," and so, it appears, will avarice and extortion.

CASE LAW AGAIN—AUDI ALTERAM PARTEM.—A few weeks ago we expressed our views, *apropos* of an address to a Bar Association upon the subject, of the utility of "case law." Now we propose to consider another address delivered before the same body,[1] in which the views taken, are of a diametrically opposite description.

After saying that much, if not most, of our modern law is judge-made, the author proceeds to state what he deems the proper course for the practitioner, thus: "To keep in mind the principles of right and wrong which, theoretically at least, underlie all law, and apply those principles to the facts under

[1] Evils of Case Law, by George H. Christy, Esq. An address delivered before the Alleghany County Bar Association.

consideration, and thereby seek a righteous verdict or adjudication In this work, previous decisions, in so far as they apply, are an obvious, important, and desirable aid, for the reason that they indicate the conclusions which previous judges have reached on the consideration of like questions, under conditions presumptively, at least, favorable to a just decision."

The practice which he deprecates, he states in these words: "The other course is, to leave out of consideration entirely, or give but little weight to the underlying principles of right and wrong, and to look through prior decisions to see if one or more cannot be found which, either in the plain meaning of the language used, or by a distortion, or perversion, or stretching of such language, will secure a favorable result."

Three classes of practitioners are charged with thus abusing, instead of properly using, case law; the beginner, the lazy practitioner, and the shyster. For the first there is the excuse that he *is* a beginner, that he knows no better; for the others there is no excuse whatever, but the *gravamen* of their offenses is, in the one case, idleness, in the other, rascality, their mode of using adjudged cases, is one of the most venial of their faults.

For the treatment of these evils, the author prescribes three separate remedies; for the beginner, that he should be trained up in the way he should go. This is very good, and at least as old as the days of King Solomon, it is a pity that neither in the practice of the law, nor in general morality is it infallible. For the lazy, he suggests that the courts should "discountenance the lazy, and compel them to argue cases upon principles rather than authority." This is very vague and impracticable. If the lazy lawyer has taken the trouble to gather together a lot of pertinent rulings by Lord Mansfield, and Lord Ellenborough, and Chief Justice Marshall, and Mr. Justice Story; or, to be more modern, of Mr. Justice Miller, or Mr. Justice Gray, or other living lights of the law, and persists in citing and commenting on them instead of discussing general and abstract propositions, what is the court to do? How is the discountenancing process to begin? The court cannot refuse to hear good authorities, nor can it get up an *index expurgatorius* of cases it will not hear.

So far as the treatment of shysters is concerned, we fully agree with the author of this address. That the standard of admission to the bar should be high, and unworthy members sternly excluded, we all agree, but that has nothing in the world to do with the evils of case law.

In all this our author seems to be fighting with shadows, the real substantial evil which he deprecates, is the multiplication of opinions, and of reports and legal publications generally. This he regards as both a cause and a consequence of the modern tendency to extreme case law practice. The demand for numerous authorities is answered by a supply of new and unnecessary reports; the abundance of new cases induces lawyers to rely upon them and become case law practitioners. The two evils act and re-act, and intensify each other.

There can be no doubt that a great deal too much material goes into "the hopper of the book mill," but we do not participate in the grave apprehension entertained by many, that the profession is destined to be overwhelmed and smothered in its own learning. We believe that the laws of trade and business, of supply and demand, will regulate all that, as they do most other matters. Lawyers will not buy what they do not need, and publishers will not print what they cannot sell. If all these publications, reports, etc., are really needed by the profession, they will be printed and sold, if not, after a disastrous experiment or two, they will be discontinued. It is true that the professsion is now, and for some time past has been, imposed upon by the insertion in reports of cases of no value or importance, but in proportion to the number of volumes now issued, lawyers do not have to pay for near as much dead matter, as did their predecessors thirty or forty years ago, when in even trivial cases the arguments of counsel were printed *in extenso* and the reports were further encumbered, in many of the cases, by long dissenting opinions. Now the space allowed in the reports to the briefs of counsel, if any, is limited to a short statement of their points, and citation of their authorities, and the dissenting opinions are usually shorter.

All this, however, is apart from the alleged predominence of case law practice. It is idle

now to talk of the practice of law at all, without the use of precedents, as indeed it would have been at any period within the life time of the common law; and access to the very latest decisions of the courts is an absolute necessity to a lawyer in active practice.

The multiplication of reports and the great increase of printed legal matter is an evil, certainly, but it is not one of the evils of case law.

NOTES OF RECENT DECISIONS.

INTERNAL REVENUE—MUNICIPAL CORPORATION—LIABILITY OF, FOR ACTS ULTRA VIRES.—From a case recently decided in the Supreme Court of the United States,[1] it would appear that the saints of Utah have manifested a capacity for "ways that are dark, and tricks that are vain," which discounts the famous "heathen Chinee," and outstrips the devices of the most slippery of sinners. It seems that Salt Lake City, as a municipal corporation, had engaged regularly in the business of distilling spirits, submitted to all the multitudinous requirements of the Internal Revenue system, paid up the taxes without demur, and drove a flourishing trade for the benefit of the city treasury. Underlying this open and fair manufacture of whiskey, was a moonshining enterprise which produced large quantities of spirits of which, for some time, the revenue officers were kept in ignorance. When they did discover it, their chief, Hollister, demanded payment of the tax on the whiskey not reported, and threatened to seize the property of the city and sell it. The tax was paid under protest, and the city brought this suit to recover it back. Hollister answered avowing his official acts, the city demurred to his answer, and the demurrer being overruled appealed to the Supreme Court.

The ground taken by the city was that, being a municipal corporation, the whole distilling business was *ultra vires*, and that therefore it was not responsible for the acts of its agents and officers in carrying on the business, especially the illicit branch of it, and that having paid, upon compulsion and under protest, it was entitled to recover back the tax it had so paid.

Mr. Justice Miller disposes of this contention in the following conclusive fashion: "It would seem that this unqualified admission that the city was actually engaged in the business of distilling spirits liable to taxation, and replenishing her treasury with the profits arising from the operation, ought to be a justification of the officer who collected the tax due for the spirits so distilled; and this argument is all the stronger since the city acknowledged its liability as a distiller by paying voluntarily the tax due on the larger part of the spirits produced. But while the city does not deny the *actual* fact of distillation, and of fraudulent returns by it, it denies the whole affair by argument. It says that, though it is very true the city did distill spirits, did sell them, and did receive the money into its treasury, it cannot be held liable for this because it had no legal power to do so. Its want of corporate authority to engage in distilling is to be received as conclusive evidence that it did not do so, while by the pleading it is admitted that it did. Because there was no statute which authorized it as a city of Utah to distill spirits, it could engage in this profitable business to any extent without paying the taxes which the laws of the United States require of every one else who did the same thing. If the territory of Utah had added to its corporate powers that of making and selling distilled spirits, then the city would be liable to the tax; but, because it had no such power by law, it could do it without any liability for the tax to the United States, or to any one else. It would be a fine thing, if this argument is good, for all distillers to organize into milling corporations to make flour, and to proceed to the more profitable business of distilling spirits, which would be unauthorized by their charters or articles of incorporation; for they would thus escape taxation, and ruin all competitors.

It is said that the acts done are not the acts of the city, but of its officers or agents, who undertook to do them in its name. This would be a pleasant farce to be enacted by irresponsible parties, who give no bond, who have no property to respond to civil or criminal suits, who make no profit out of it, while

[1] Salt Lake City v. Hollister, S. C. Rep. Vol. 6, 1055.

the city grows rich in the performance. It is to be taken as a fair inference on this demurrer that all that the city might have done, was done in establishing this business. The officers who, it is said, did this thing, must be supposed to have been properly appointed or elected. Resolutions or ordinances of the governing body of the city directing the establishment of the distillery, and furnishing money to buy the plant, must be supposed to have been passed in the usual mode. Everything must have been done by the same rules, and by the same men, as if it were a hospital or a town hall. If the demurrer had not admitted this, it could no doubt have been proved on an issue denying it.

But the argument is unsound that whatever is done by a corporation in excess of the corporate powers, as defined by its charter, is as though it was not done at all. A railroad company authorized to acquire a right of way by such exercise of the right of eminent domain as the law prescribes, which undertakes to and does seize upon and invade, by its officers and servants, the land of a citizen, makes no compensation, and takes no steps for the appropriation of it, is a naked trespasser, and can be made responsible for the tort. It had no authority to take the man's land or to invade his premises. But if the governing board had directed the act, the corporation could be sued for the tort, in an action of ejectment, or in trespass, or on an implied *assumpsit* for the value of the land. A plea of *ultra vires*, in this case, would be no defense. The truth is that, with the great increase in corporations in very recent times, and in their extension to nearly all the business transactions of life, it has been found necessary to hold them responsible for acts not strictly within their corporate powers, but done in their corporate name, and by corporation officers who were competent to exercise all the corporate powers. When such acts are not founded on contract, but are arbitrary exercises of power in the nature of torts, or are *quasi* criminal, the corporation may be held to a pecuniary responsibility for them to the party injured."

In an older case in the same court, the same doctrine has been held.[2] In that case a corporation was held liable for a libel contained in a letter published by order of its board of directors. The argument that malice, an essential ingredient of a libel, could not be predicated of a corporation, was met by the counter argument that when corporations deal as natural persons, with natural persons, they are responsible as such persons. Responsibility in such case is reciprocal. "The result is," said the court, "that for acts done by the agents of a corporation, either *in contractu* or *in delicto* in the course of its business or their employment, the corporation is responsible, as an individual is responsible, under similar circumstances."

In a Massachusetts case a bank was held liable for a malicious prosecution.[3] It should be noted that in these cases the publication of the letter, or the prosecutions of the parties, were not acts necessarily *ultra vires*. A corporation may well publish letters connected with its business, or prosecute persons whom it charges with crime. The acts themselves are within the scope of the corporate powers, but the coporation is held liable for the motives of its officers, whose acts are *prima facie* within the scope of their powers, and, but for the motive, would have been strictly legal.

The case under consideration goes much further than these. Running the distillery at all, lawfully or unlawfully, was clearly *ultra vires*; everything done in this matter by agents of the city was beyond the scope of their powers, and yet the city, and of course its taxpayers, were held responsible, and would have been so held if the distillery speculation had proved disastrous, instead of being very profitable. The court makes a distinction between this case, and those in which contracts made *ultra vires* by corporations, have been held incapable of enforcement against them. Of such cases the court says: "Here the party dealing with the corporation is under no obligation to enter into the contract. No force or restraint or fraud is practiced on him. The powers of these corporations are matters of public law, open to his examination, and he may, and must judge for himself as to the power of the corporation to bind itself by the proposed agreement. It is to this class of cases that most of the authorities cited

[2] Philadelphia, etc., Co. v. Quigley, 21 How. 202.

[3] Reed v. Home Savings Bank, 130 Mass. 445; see also Copley v. Grover, etc., Co., 2 Woods C. C. 494.

by the appellants belong—cases where corporations have been sued on contracts which they have successfully resisted because they were *ultra vires*. But, even in this class of cases, the courts have gone a long way to enable parties who had parted with property or money on the faith of such contracts to obtain justice by recovery of the property or the money specifically, or as money had and received to plaintiff's use."[4]

[4] Thomas v. Railroad Co., 101 U. S. 71; Louisiana v. Wood, 102 U. S. 294; Chapman v. Douglas Co., 107 U. S. 355; s. c., 2 Sup. Ct, Rep. 62.

RULES OF PRACTICE ON THE TAKING OF DEPOSITIONS.

§ 1. By what Law Governed.
§ 2. Commissioner's Duty cannot be Delegated.
§ 3. Commissioner Disqualified by Interest or Relationship.
§ 4. Time within which the Deposition may be Taken.
§ 5. Attachment of Witnesses to Secure Attendance.
§ 6. Adjournments.
§ 7. Swearing the Witness.
§ 8. Right to Cross-examine and to be Represented by Counsel.
§ 9. All Interrogatories must be Answered.
§ 10. In whose Handwriting the Deposition should be.
§ 11. Depositions Written Beforehand.
§ 12. Erasures and Interlineations.
§ 13. Signature of Commissioner and Witness.
§ 14. Exhibits.
§ 15. Evidence Given in a Foreign Language.
§ 16. When Objections must be Interposed.
§ 17. What the Certificate must Show.
§ 18. Authentication of Certificate.

§ 1. *By what Law Governed.*—In all matters not regulated by the common law, the practice to be observed in the taking of depositions is that directed by the statutory provisions of the State or country from which the commission or *dedimus* issues, not that which obtains in the jurisdiction where the witness is found. Hence, depositions taken in a State other than that in which the cause is pending, and in a manner not authorized by the laws of the State where taken, will nevertheless be admissible in the State where they were intended to be used, provided they would have been admissible if taken in that manner at home.[1] And a commissioner, appointed to take testimony in a foreign State, is not a public officer of the State where he is to act, but an officer of the State under whose authority he is appointed, who is allowed by the comity and the legislation of the former State to exercise there certain powers and functions.[2] An exception to this rule, however, is found in the case of letters rogatory, which are issued to the courts of a foreign country whose laws expressly forbid the execution of a commission within its territory, and inviting the assistance of such courts in procuring desired evidence. In such case, of course, the foreign court is at liberty to follow its own modes of procedure and practice, and the deposition will not be invalidated by circumstances attending its taking which, under our own laws, would be regarded as irregularities.[3]

§ 2. *Commissioner's Duty cannot be Delegated.*—A commissioner appointed to take testimony cannot delegate his authority; he must exercise it himself; his trust is strictly personal.[4] Thus a commission directed to the clerk of a district court cannot be executed by his deputy;[5] and a commission, issued to several persons jointly, cannot be executed by one of the commissioners named and a stranger.[6] For this reason, also, the caption must affirmatively show that the oath was administered to the witness by the commissioner and not by another person.[7] But depositions taken under a commission issued

[1] Bostwick v. Lewis, 1 Day, 33; City Bank v. Young, 43 N. H. 457; Kuehling v. Leberman, 9 Phila. 163.

[2] Lyman v. Hayden, 118 Mass. 422.

[3] "There is a very broad distinction between the execution of a commission and the procuring testimony by the instrumentality of letters rogatory, or letters requisatory, as they are sometimes called. In the former case the rules of procedure are established by the court issuing the commission, and are entirely under its control. In the latter, the methods of procedure must, from the nature of the case, be altogether under the control of the foreign tribunal which is appealed to for assistance in the administration of justice. We cannot execute our own laws in a foreign country, nor can we prescribe conditions for the performance of a request which is based entirely upon the comity of nations, and which, if granted, is altogether *ex gratia*." Thayer, J., in Kuehling v. Leberman, 9 Phila. 163.

[4] Chappeau v. Baker, 1 Har. & G. 154.

[5] Urquhart v. Burleson, 6 Tex. 502.

[6] Kingsbury v. Kimball, 32 Pa. St. 518. And a commission to take depositions issued to one commissioner is vitiated by inserting the names of two others. Hemphill v. McBride, 12 Sm. & Mar. 620.

[7] Powers v. Shepard, 21 N. H. 60; Reg. v. Bloxham, 6 Ad. & El. (N. S.) 528; Perry v. Thompson, 16 N. J. L. 72.

to a place where, by the local law, the commissioners are prohibited to execute the commission, may be taken according to the law of the place, in the presence of the commissioners, by a judge.[8] And, by consent of parties, a foreign commission may be issued in blank, leaving the name of the commissioner to be inserted when the deposition comes to be taken.[9]

§ 3. *Commissioner Disqualified by Interest or Relationship.*—In order to the purity of legal administration, it is essential that the duties of the commissioner should be discharged by one who is neither interested in the event of the suit, nor liable to bias or prejudice in favor of either party. Hence, depositions taken before a commissioner who has acted as the agent or attorney of the party in the same cause are inadmissible.[10] But a commissioner is not disqualified from taking a deposition because he once appeared in the cause, on a special occasion, on behalf of an attorney who was detained by ill health, but afterwards, and before the deposition was taken, became entirely disconnected with the case.[11] In Texas, a deposition cannot be admitted when taken before an officer who is surety, on the bond for costs, of the party offering it.[12] An uncle to a party in a suit is not a proper person to take depositions for such party, to be used in the suit;[13] but in Massachusetts it is held that a deposition may be taken by a justice of the peace who is the son-in-law of one of the parties in the action, no fraud or partiality being alleged.[14] In Tennessee it is said that a certificate to a deposition which does not state, in compliance with the Code, § 3848, that the person taking it has no interest in the cause, and is not of kin or counsel to either of the parties, is fatally defective, and, on exception, must be excluded.[15] But it is believed that this requirement does not prevail elsewhere.

§ 4. *Time within which the Deposition may be Taken.*—A deposition cannot be taken after the day on which the commission is returnable; if so, it is properly excluded.[16] But where it is to be taken between certain hours on a given day, it is not necessary to keep the examination open during the entire time; a reasonable time must be given to the party to appear and cross-examine (if that be the method of conducting the proceeding), and if he fails to do so, the examination may be closed.[17] A deposition certified to be taken "agreeably to notice" will be presumed to have been taken between the hours specified in the notice.[18]

§ 5. *Attachment of Witnesses to Secure Attendance.*— By the laws of Rhode Island, magistrates, empowered to take depositions, may compel, by attachment for contempt, witnesses summoned by them to appear before them and depose as to what they know relative to the suit under consideration.[19]

The same is true in Pennsylvania:[20] and probably in most or all of the other States, though this is so largely a matter of statute, that it is not deemed profitable to pursue it further in this connection. Similarly, where a witness, who is duly subpœnaed to testify in a cause before a commissioner, by giving his deposition, refuses to testify, he may be committed by the commissioner for contempt.[21]

§ 6. *Adjournments.*—In New Jersey it is held that commissioners have no power to adjourn the examination; their authority only extends, when once commenced, to a continuance from day to day, while actually proceeding with the examination of witnesses.[22] In Vermont, on the other hand, it is said that a person authorized to take a deposition may adjourn the time of taking it at his discretion, even though neither party appear at the time first appointed, provided reasonable notice be given to the parties.[23] But at all events he may certainly continue the hearing from day to day, if one session be

[8] Winthrop v. Ins. Co., 2 Wash. C. C. 7.
[9] Carlyle v. Plumer, 11 Wis. 96; Oliver v. Bank, 11 Humph. 74.
[10] Smith v. Smith, 2 Me. 408.
[11] Wood v. Cole, 13 Pick. 279.
[12] Floyd v. Rice, 28 Tex. 341.
[13] Bean v. Quimby, 5 N. H. 94.
[14] Chandler v. Brainard, 14 Pick. 285.
[15] Carter v. Ewing, 1 Tenn. Ch. 212; Wilson v. Smith, 5 Yerg. 379. But see Blair v. Bank, 11 Humph. 84.
[16] Herndon v. Givens, 16 Ala. 261; Veach v. Bailiff, 5 Harr. (Del.) 379.
[17] Bigoney v. Stewart, 68 Pa. St. 318; House v. Cash, 2 Cranch C. C. 73.
[18] Maxwell v. McIlvoy, 2 Bibb, 211.
[19] *In re* Jenckes, 6 R. I. 18; Rev. Stat. R. I., 187, §§ 15, 21.
[20] Bright. Purd. Dig., 622, § 3.
[21] Matter of Abeles, 12 Kas. 451. And in Pennsylvania, Bright. Purd. Dig. 623, § 5.
[22] Parker v. Hayes, 23 N. J. Eq. 186.
[23] Pindar v. Barlow, 31 Vt. 529.

not sufficient, until it is completed.[24] But it is irregular to adjourn from the place where the adverse party has been notified to attend, to another place, in the absence of such party.[25]

§ 7. *Swearing the Witness.*—There is much difference of opinion as to whether the witness must be sworn to the truth of his statements before his examination is begun, or whether it is not equally permissible to have him verify the whole contents of his deposition after it is completed. In the United States courts, the witness may be sworn either before or after his deposition is reduced to writing.[26] And the same rule is held in Vermont and Maine.[27] But in Pennsylvania it is required that the witness be first sworn and then examined.[28] It would seem not unreasonable to introduce a distinction founded upon the question whether the deposition is taken upon written interrogatories settled by stipulation before the commission issues, or whether the examination is conducted *viva voce* by opposing counsel. In the former case, it is in reality nothing more than an affidavit, the contents of which are first elicited by the direct interrogatories and then sifted by the cross-interrogatories, and therefore there could be no impropriety in allowing the witness to make oath to its verity in its concrete form. In the other case, the same reasons exist for swearing the witness before the examination begins, which obtain when he is placed upon the stand in a trial in court. Where the statute prescribes a form of oath to be administered to a witness whose deposition is taken out of the State, that form must be observed, or the deposition will be suppressed.[29] The certificate that the witness was conscientiously scrupulous of taking an oath, is sufficient evidence of that fact to admit a deposition taken upon affirmation.[30]

§ 8. *Right to Cross-examine and to be Represented by Counsel.*—Where a deposition is taken by summoning the witness before the commissioner, and examining him upon interrogatories not settled beforehand, but propounded at the time by the counsel for the parties respectively, it is well settled that the party against whom the testimony is proposed to be used, must have an opportunity to sift the evidence by cross-examination. This right is as well secured to him as the privilege of cross-examining a witness produced and interrogated in court. And if he is deprived of this advantage, the deposition will be entirely *ex parte* and must be suppressed.[31] And parties have the same right to appear by counsel on the execution of a commission for the examination of witnesses as on the trial of a cause.[32] On the other hand, where testimony is taken on interrogatories settled and reduced to writing before the commission issues, it is the doctrine of the Pennsylvania courts (and would probably be so held elsewhere), that the deposition will be rejected if the attorney of either of the parties was present at the taking, notwithstanding he assumed no share in the examination.[33] And it is also to be observed that, where this method is observed, the commissioners have no authority to propound any questions to witnesses but those which are sent out with the commission, and the answers to such questions should not be suffered to go to the jury.[34]

§ 9. *All Interrogatories must be Answered.*—Where an interrogatory, or cross-interrogatory, which is pertinent and material, has not been answered, the deposition will be excluded.[35] But the refusal or failure of a witness to answer a question addressed to him on the examination, will not furnish adequate ground for suppressing the deposition, when it appears that the interrogatory is sufficiently answered in another part of the deposition, or that the answer would be immaterial at a trial of the cause on its merits.[36] Furthermore, the answers of the witness should be

[24] Ulmer v. Anstill, 9 Port. (Ala.) 157.
[25] Beach v. Workman, 20 N. H. 379.
[26] Tooker v. Thompson, 3 McLean, 92.
[27] Barron v. Petes, 18 Vt. 385; Wight v. Stiles, 29 Me. 164.
[28] Stonebreaker v. Short, 8 Pa. St. 155; Armstrong v. Burrows, 6 Watts, 266.
[29] Bacon v. Bacon, 33 Wis. 147.
[30] Elliot v. Hayman, 2 Cranch C. C. 678.
[31] Dannefelser v. Weigel, 27 Mo. 45; Stille v. Layton 2 Harr. (Del.) 149.
[32] Union Bank v. Torrey, 5 Duer, 626.
[33] Hollister v. Hollister, 6 Pa. St. 449.
[34] Insurance Co. v. Bossiere, 9 Gill & J. 121.
[35] Nicholson v. Desobry, 14 La. An. 81.
[36] Goodrich v. Goodrich, 44 Ala. 670. And a deposition is good, one of the cross-interrogatories to which was not put or answered, if the deposition was signed without objection in the presence of the counsel of both parties. Kimball v. Davis, 19 Wend. 437.

substantially responsive to the interrogatories, and portions not so responsive should be excluded.[37]

§ 10. *In whose Handwriting the Deposition should be.*—In general the deposition must be reduced to writing either by the commissioner himself, or by the witness. But in a case where it appeared that the magistrate who took the deposition, not being a ready penman, called in an indifferent third person to write the answers of the witness, the magistrate being present and supervising, it was held that the deposition might be admitted, though this practice should not be encouraged.[38] Depositions reduced to writing by counsel for a party to the suit will usually be rejected.[39]

§ 11. *Depositions Written Beforehand.*—A deposition cannot be admitted which was written out by the witness before his examination, and the caption, in the commissioner's hand, thereupon prefixedto it.[40] So a deposition, written out by the agent of the party or his wife, not in the presence of the justice, and afterwards sworn to, cannot be read in evidence.[41]

§ 12. *Erasures and Interlineations.* — Of course an unexplained erasure or interlineation in a deposition would be regarded as a very suspicious circumstance, especially if there has been any opportunity for either party to tamper with the deposition. But it is held that an erasure or interlineation which is shown to have existed at the time the deposition was returned and opened by the clerk of the court will be presumed to have been made with the knowledge and consent of the witness at the time his testimony was taken.[42]

§ 13. *Signature o Commissioner and Witness.*—It is held in several of the States to be unnecessary that a deposition taken under a commission should be subscribed by the witness; it is enough if it appear in the body of the certificate that he was duly sworn.[43] In Louisiana, however, the deposition must be signed by the witness, or his mark must be affixed to it, at the time it is taken, or it will be inadmissible.[44] Where a deposition appears from inspection to have been signed by the deponent, it is not necessary that the magistrate taking it, should state such fact in his certificate.[45] But, under any circumstances, the absence of the signature of the *commissioner* is a fatal defect.[46]

§ 14. *Exhibits.*—Any exhibits spoken of by a deponent should be referred to in the body of the deposition, and either annexed to the deposition or so marked as to be identified.[47] Thus a deed or other exhibit proved under a commission should be annexed to and returned with the commission; but where it is in the custody of the law, *e. g.*, being a part of the records of a county, annexing a copy is sufficient, and the exhibit may be produced at the trial, separate from the commission.[48] So, where a witness, living out of the jurisdiction of the court, refused to attach an original paper in his possession to his deposition, it was held that a copy might be annexed to the return and used in evidence.[49]

§ 15. *Evidence Given in a Foreign Language.*—Depositions may be taken in a foreign language when the witnesses are unable to speak English; when introduced in our courts, they can be translated by a sworn interpreter.[50] But where the witness does not understand the language of the commissioners, and the commissioners do not understand the language of the witness, they are to swear an interpreter, which they have implied authority to do.[51] However, where it appears by the

[37] McCarver v. Nealey, 1 Greene (Iowa), 360.

[38] Cushman v. Wooster, 45 N. H. 410.

[39] Mosely v. Mosely, Cam. & N. (N. C.) 521. But depositions may be admitted, though in the handwriting of the attorney for one of the parties, if shown to have been so written with the consent of the opposing counsel. Farmers' Bank v. Woods, 11 Pa. St. 99.

[40] McEntire v. Henderson, 1 Pa. St. 402. If the answers of the witnesses have been prepared in writing by their counsel in advance of the examination, the depositions will be suppressed. North Carolina R. R. v. Drew, 3 Woods, 691.

[41] Grayson v. Bannon, 8 Watts, 524.

[42] Wallace v. McElevy, 2 Grant (Pa.), 44.

[43] Morss v. Palmer, 15 Pa. St. 51; Barnett v. Watson, 1 Wash. (Va.) 372; Morley v. Hamit, 1 A. K. Mar. 590; Rutherford v. Nelson, 1 Hayw. (N. C.) 105: Wiggins v. Pryor, 3 Port. (Ala.) 430.

[44] Lee v. Lee, 1 La. An. 318.

[45] Lewis v. Morse, 20 Conn. 210. But an exactly opposite rule is held in Texas. Thompson v. Haile, 12 Tex. 139.

[46] Price v. Emerson, 16 La. An. 95.

[47] Dailey v. Green, 15 Pa. St. 118; Crary v. Carradine, 4 Ark. 216.

[48] Jackson v. Shepherd, 6 Cow. 444.

[49] Thorn v. Wilson, 27 Ind. 370. Promissory notes which are exhibits to the bill in a foreclosure suit need not be attached to the interrogatories to a witness called to prove them by deposition. Mobley v. Leophart, 47 Ala. 258.

[50] Cavasos v. Gonzales, 33 Tex. 133.

[51] Amory v. Fellowes, 5 Mass. 219.

answers that the witness does not understand the English language, the court will presume, in the absence of proof to the contrary, that the commissioners understood the language of the witness.[52]

§ 16. *When Objections must be Interposed.*—The usually accepted doctrine is, that a general objection to a deposition reaches the relevancy, competency, or legal effect of the testimony only, and will not be considered as extending to any matter of form or question of regularity or authority in respect to the taking of such deposition.[53] Hence, objections to the form of a question or to the manner of conducting the examination must be made at the time they occur, or at any rate before the trial, in order to be available.[54] Thus it is too late to raise formal objections to a deposition on the trial in the superior court after it has been read before an auditor without objection.[55] But in regard to objections to the competency of the witness, there is a great difference of opinion. In many of the States it is held that if the grounds of the alleged incompetence are known at the time the deposition is taken (or the interrogatories settled), an objection must be interposed before the examination of the witness is commenced; that if not so interposed, it cannot afterwards be urged at the trial, but will be taken to have been waived.[56] Similarly, where proof is offered of a paper, at the taking of a deposition, if no objection is then made, none can be made at the trial, as it is a rule of evidence that objections to the competency of proof should be made when the proof is first offered.[57] On the other hand, it is held in Massachusetts, Maine, Pennsylvania, and Tennessee, that the omission to except to the competency of the witness at the time of taking the deposition will not preclude the party from doing so at the trial.[58] But on approaching the topic of objections to questions as *leading*, we find the authorities again in harmony. It is unanimously held that an objection to a question and answer, in the deposition of a witness, because the question is leading, is an objection not to the substance or relevancy of the evidence, but to the form and manner of obtaining it, and should be made when the question is put to the witness, or it will be taken as waived.[59] And where the interrogatories are settled by the attorneys, and a stipulation to that effect indorsed thereon, neither party can, at the trial, object to the reading of the deposition on the ground that the interrogatories are leading.[60] And it seems that objections to depositions as containing hearsay evidence must be made before the trial;[61] but that objections to a deposition on the ground of alleged irrelevancy of the testimony may be first made on the trial, as the decision of this question may depend upon other evidence to be then produced.[62]

§ 17. *What the Certificate must show.*—There is also a great lack of harmony as to what must be shown by the certificate of the commissioner. In some jurisdictions it is held that the requisitions of the statute must be strictly complied with, and this must appear on the face of the deposition to entitle it to admission in evidence.[63] Thus, depositions not appearing on their face to have been taken according to notice, both as to time and place, cannot be received.[64] Again, it must appear from the caption of the deposition that it was taken at the request of one of the parties to the suit in which it is to be used.[65] And the caption must set forth that the deponent was sworn to testify the truth, etc., relating to the cause for which the depo-

[52] City Ins. Co, v. Carrugi, 41 Ga. 660.

[53] Blackburn v. Morton, 18 Ark. 384; Garvin v. Luttrell, 10 Humph. 18.

[54] Polleys v. Ins. Co., 14 Me. 141; Croft v. Rains, 10 Tex. 520. Though it is said in Polleys v. Ins. Co., that testimony in itself illegal cannot be admitted because objections are not thus made.

[55] Gould v. Hawkes, 1 Allen, 170.

[56] Hair v. Little, 28 Ala. 236; Thompson v. Rawles, 33 Ala. 29; Gilkey v. Peeler, 22 Tex. 663; Weil v. Silverstone, 6 Bush. 698; Winslow v. Newlan, 45 Ill. 145; Lockwood v. Mills, 39 Ill. 602.

[57] Ward v. Whitney, 3 Sandf. 399.

[58] Whitney v. Haywood, 6 Cush. 82; Atlantic Ins. Co. v. Fitzpatrick, 2 Gray, 279; Lord v. Moore, 37 Me. 208; Mifflin v Bingham, 1 Dall. 272; Barton v. Trent, 3 Head, 161.

[59] Crowell v. Bank, 3 Ohio St. 406; Keeney v. Chilis, 4 Greene (Iowa), 416; Mumma v. McKee, 10 Iowa, 107; Jones v. Lucas, 1 Rand. (Va.) 268; McCandlish v. Edloe, 3 Gratt. 330; Kyle v. Bostick, 10 Ala. 589; Glasgow v. Allen, 11 Mo. 34; Walsh v. Agnew, 12 Mo. 520; Sheeler v. Speer, 3 Binn. 130; Rowe v. Godfrey, 16 Me. 128; Chambers v. Hunt, 22 N. J. L. 552.

[60] Cope v. Sibley, 12 Barb. 521.

[61] Ector v. Welsh, 29 Ga. 443.

[62] Horseman v. Todhunter, 12 Iowa, 230.

[63] Dye v. Bailey, 2 Cal. 383; Bascom v. Bascom, Wright (Ohio), 632.

[64] Collins v. Elliott, 1 Har. & J. 1; Williams v. Bourks, 5 Md. 198; Mathews v. Dare, 20 Md. 248.

[65] Whitney v. Sears, 16 Vt. 587.

sition was taken, or it will be rejected.[66] But in Louisiana, it is said that the form of certificate to the return of a commission to take testimony is not sacramental, and it is sufficient if it appear in the return when, and where, and by what authority, the deposition of the particular witness was taken.[67] So it is not necessary that the caption of a deposition should specify the kind of action in reference to which it was taken.[68] But a defective caption of a depoition may be amended after verdict, if it contain sufficient to amend by.[69] And in general, the court will intend that the proceedings under a commission to take depositions out of the State were regular in all respects, unless the contrary appears.[70] In Mississippi it is said that depositions taken in other States must be certified according to the laws of the States where taken; but in the absence of proof of what those laws are, the certificate will be judged of by the laws of Mississippi.[71]

§ 18. *Authentication of Certificate.*—When a commission to take testimony is addressed to a resident of another State by name, he becomes an officer of the court *ad hoc*, and no proof is required of his being a magistrate, or of his authority to administer oaths, or of his signature.[72] And where a commission issues to any judge or magistrate of another State, the official certificate of the judge or magistrate is received as *prima facie* evidence of his authority.[73] Nevertheless, there are authorities to the position that if a commission to take depositions in another State is not directed to commissioners named, but to a justice of the peace, or to a notary public, his official character should be certified under the seal of a court of record.[74]

But of course if the person executing the commission be a commissioner of deeds for the State in which the cause is pending, the depositions are sufficiently authenticated by his own certificate and seal.[75]

H. CAMPBELL BLACK,

Williamsport, Pa.

[66] Simpson v. Carleton, 1 Allen, 109.

[67] Cain v. Loeb, 26 La. An. 616.

[68] Scott v. Perkins, 28 Me. 22. Where the name of a defendant is omitted in the caption of a deposition, but appears in the commission, notices served, caption of the interrogatories filed, etc., it cannot be said that the deposition does not appear to be taken in the cause, and is therefore to be excluded. Merrill v. Dawson, Hempst. 563.

[69] Rand v. Dodge, 17 N. H. 343.

[70] Halleran v. Field, 23 Wend. 38: Thrasher v. Ingram, 32 Ala. 645; Imboden v. Richardson, 15 La. An. 534.

[71] Coopwood v. Foster, 12 Sm. & Mar. 718.

[72] Bradford v. Cooper, 1 La. An. 325; Morrison v. White, 16 La. An. 100; Kendall v. Limberg. 69 Ill. 355.

[73] Clement v. Durgin, 5 Me. 9; Hoover v. Rawlings, 1 Sneed, 287. So where depositions are taken under the act of Congress, the certificate of a person named in the act as having authority to take depositions is received without further proof of his authority. Price v. Morris, 5 McLean, 4.

[74] Wheeler v. Shields, 2 Scamm. 348; Jenkins v. Tobin, 31 Ark. 306; Patterson v. Patterson, 1 D. Chip.176.

[75] Johnson v. Cocks, 7 Ark. 672.

MUNICIPAL BONDS—WHEN THEY MAY BE LEGALIZED—WHEN OPINION OF STATE COURT NOT FOLLOWED.

ANDERSON, EXR. v. TOWNSHIP OF SANTA ANNA.

Supreme Court of the United States, November 23, 1885.

1. LEGALIZED SUBSCRIPTION.—That according to repeated decisions of the Supreme Court of Illinois and this court, defective subscriptions may be ratified where the legislature could have originally conferred the power.

2. The cases rest upon the principle that the legislature, when not restricted by the Constitution, may, by retroactive statutes, legalize the unauthorized acts and proceedings of subordinate municipal agencies, where such acts and proceedings would have been valid, if done under legislative sanction previously given.

3. That it is the established doctrine of the court, that where the liability of a municipal corporation upon negotiable securities, depends upon a local statute, the rights of the parties are to be determined according to the law, as declared by the State Courts at the time such securities were issued.

4. That when these bonds were executed, there was no decision of the Illinois Supreme Court, in reference to the power of the legislature to enact the statute in question, and it is therefore the duty of the court to to determine upon its independent judgment, what was the law of Illinois at the time when the rights of the parties accrued.

5. That the legislature could lawfully have authorized a subscription by Santa Anna township to the stock of the road, upon the assent in some proper form of a majority of its legal voters; that the act of 1867 interfered with no vested right of the township, for it had no privileges which were not subject to legislative control. The statute did nothing more than to ratify and confirm acts which the legislature might lawfully have authorized in the first instance.

6. That it is the settled doctrine of this court, that rights accruing under one construction will not be lost merely by a change of opinion in the State court; and where such rights have accrued before the State Court

has announced its construction, the Federal courts, although leaning to an agreement with the State court, must determine the question upon their own independent judgment.

In error to the Circuit Court of the United States for the Southern District of Illinois.

Mr. Justice HARLAN delivered the opinion of the court:

This is an action to recover from the township of Santa Anna, established under the general township organization laws of Illinois, the amount of certain negotiable bonds, with interest coupons attached, signed by its supervisor and clerk, and purporting to have been issued by it, on the 1st day of October, 1867, "under and by virtue of a law of the State of Illinois, entitled, 'An act to amend the articles of association of the Danville, Urbana, Bloomington and Pekin Railroad Company, and extend the powers of and confer a charter upon the same.' Approved February 28, 1867, and in accordance with the vote of the electors of said township, at the special election held July 21, 1866, in accordance with said act." Each bond, also, recites that the faith of the township is "pledged for the payment of said principal sum and interest."

The circuit court sustained a demurrer to the declaration and amended declaration, and gave judgment for the township.

The act of February 28, 1867, empowered the railroad company to locate and construct a railroad from Pekin, in Tazewell county, through, or as near as practicable, certain named towns to the eastern boundary of the State of Illinois. For the purpose of aiding in its construction, authority was given to incorporated towns or townships in counties, acting under township organization law, along the route of the road, to subscribe to the capital stock of the company in any sum not exceeding $250,000.

By the 13th section of the act it is provided:

"§ 13. No such subscription shall be made until the question has been submitted to the legal voters of such incorporation, town or township in which the subscription is proposed to be made; and the clerk of each of said towns or townships is hereby required, upon the presentation of a petition signed by at least ten citizens, who are legal voters and tax-payers of such town or township, for which he is clerk, and in which petition the amount proposed to be subscribed shall be stated, to post up notices in at least three public places in each town or township; which notice shall be posted not less than thirty days before the day of holding such election, notifying the legal voters of such town or township to meet at the usual place of holding elections in such town or township, or some other convenient place named in such notice, for the purpose of voting for or against such subscription: *Provided*, that where elections may have already been held, and the majority of the legal voters of any township or incorporated town were in favor of a subscription to said railroad, then and in that case no other election need be had, and the amount so voted for shall be subscribed as in this act provided. And such elections are hereby declared to be legal and valid, as though this act had been in force at the time thereof, and all the provisions hereof had been complied with."

The pleadings allege that on the 21st of July, 1861, the township of Santa Anna, through which the road passed, "held a special election upon the question of subscribing the sum of $50,000 to the capital stock of said Danville, Urbana, Bloomington & Pekin Railroad Company, at which said election a majority of the legal voters of said township voted for and were in favor of a subscription to the capital stock of said railroad company, by the said township," of the said sum; that on the 1st of October, 1867, in pursuance of said vote, and of said act of February 28, 1867, the then supervisor of the township subscribed, in its name, the sum of $50,000, receiving from the railroad company, for the township, proper certificates of stock, and in connection with the township clerk and in payment for such stock, executing and delivering to the company the bonds and coupons in suit; that the township for nine consecutive years regularly and annually assessed taxes to meet the interest on said bonds, and paid the same over without objection; that on the 1st day of December, 1868, the plaintiff purchased the bonds in suit at their par value from one Tiernan, to whom they had been sold by the company; that on the first Monday of September, 1869, and subsequently, the township by its proper officers participated as a stockholder in sundry meetings of the company's stockholders; that on the 28th of October, 1871, its then supervisor caused the bonds to be registered in the office of the auditor of public accounts of Illinois, who indorsed on each bond his certificate to the effect that it had been registered in his office, pursuant to the act of April 16, 1869, to fund and provide for paying the railroad debts of counties, townships, cities, and towns; and that on the first day of July, 1874, the township exchanged this stock for a like amount of stock in another corporation, the Indianapolis, Bloomington & Western Railroad Company, which latter stock, during the time the township has held and owned it, has been worth as much as fifty per cent. of its par value.

The record does not disclose the particular ground upon which the circuit court sustained the demurrer, and gave judgment for the township. But we cannot see how that result was possible, except upon the hypothesis that the act of February 28, 1867, legalizing elections previously held, at which a majority of the legal voters of a township declared in favor of a subscription to the stock of this company, was unconstitutional. But the constitutionality of that very statute, in respect of the clause now before us, was directly

sustained by this court in St. Joseph Township v. Rogers, 16 Wall. 644, 663. The question there, was as to the validity of bonds issued by a township on the 1st of October, 1867, to the Danville, Urbana, Bloomington and Pekin Railroad Company, under the authority of the before-mentioned act of February 28, 1867, and in accordance with a popular vote at an election held in August, 1866. It was there contended that the act was unconstitutional and void, as creating a debt for a municipality, against its will expressed in a legal manner. There, as here, the election referred to in the bonds was held without authority of law. But the court, speaking by Mr. Justice Clifford, said, that according to the repeated decisions of the Supreme Court of Illinois and of this court, defective subscriptions of the kind there made, "may in all cases be ratified where the legislature could have originally conferred the power," citing among other cases, Cowgill v. Long, 15 Ill. 203, and Keithsburg v. Frick, 34 Id. 405.

In Cowgill v. Long, 15 Ill. 202, it appears that a statute of Illinois authorized the legal voters of any school district to meet together at a certain time in any year and determine by vote whether a tax should be levied for the support of common schools, for building and repairing school houses, or for other school purposes. The inhabitants of a district held an election and voted a tax for the purpose of erecting a school house. The tax was assessed, and steps were taken for its collection. But as the election was not held at the time directed by the statute, certain tax-payers, whose property was levied on and was about to be sold, instituted a suit to enjoin the sale. Pending that suit, the legislature passed an act declaring the vote and tax "to be good, valid, and effectual in law and in equity," and legalized what had been done by the local officers in reference to the assessment of the tax. The court held that although the tax was voted at a time not authorized by law, and was not so certified as to become a valid tax, "it was clearly competent for the legislature to remedy those defects, while the tax remained uncollected." "Laws of this character," said Chief Justice Treat, delivering the unanimous opinion of the court, "are often passed to secure the collection of taxes defectively levied, and there can be no serious objections to their validity."

In Keithsburg v. Frick, 34 Ill. 421, one of the questions presented was as to the validity of an act of 1857, giving a special charter to the town of Keithsburg, and conferring upon it authority to subscribe stock to a certain railroad company, and at the same time legalizing and confirming a previous subscription to the stock of the same corporation by the town while acting under the general incorporation law for towns and cities. The court, speaking by Mr. Justice Breese, said: "If the subscription was made under the organization allowed by the general incorporation law of 1849, the 17th section of the act of 1857, legalizes and confirms it; p. 874. The subscription, therefore, was good if made under the act of 1857, as an original subscription under the 2nd section, or was a subscription made under the act of 1849, confirmed as it is by the 17th section of the act of 1857. The bonds may be regarded as issued by the old corporation, confirmed by the new act, or as a new issue under the 2nd section of the act of 1857;" p. 421.

In Scholfield v. Walkins, 22 Ill, 66, 73, one of the questions was as to the constitutionality of a statute which legalized the acts and proceedings of certain school district trustees in uniting districts and levying and collecting taxes for building houses and for the support of schools therein, and provided that all proceedings may be had in the same manner as if those proceedings had been strictly regular and legal. The court said, by Walker, J., that there could be no doubt that "the legislature have the power to form a school district, or may legalize the acts of officers in attempting to form a district, so as to render such district legal. * * * And the power to cure irregularities in the manner of levying a tax is equally undoubted, and so far as this tax was levied for the purposes specified in the act, there is no doubt that the levy is thereby made valid."

These cases were all determined before the bonds in the suit were issued. While they are not analogous in every respect to the one before us, they seem to rest upon the principle that the Legislature, when not restricted by the constitution, may by retroactive statutes, legalize the authorized acts and proceedings of subordinate municipal agencies, where such acts and proceedings would have been valid if done under legislative sanction previously given. The decision in St. Joseph Township v. Rogers, only gave effect to principles announced by the State court prior to the issuing of the bonds. If, according to the law of Illinois, as declared by its highest court at the time the bonds in suit were issued, the act of February 28, 1867, was a valid exercise of legislative power, the rights of the purchasers or holders could not be affected merely by subsequent change of decision. For, it is the long established doctrine of this court, from which as said recently in Green county v. Conness, 109 U. S. 108, we are not disposed to swerve, that where the liability of a municipal corporation upon negotiable securities depends upon a local statute, the rights of the parties are to be determined according to the law as declared by the state courts at the time such securities were issued. In Douglas v. County of Pike, 101 U.S. 677, the Chief Justice said: "After a statute has been settled by judicial construction, the construction becomes, so far as contract rights are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in effect on contract as an amendment of the law by means of a legislative enactment." See also County of Ralls v. Douglas, 105 U. S. 732; Olcott v. Supervisors, 16 Wall. 678; City v. Lamson, 9 Id. 477, 485; Boyd v. Albama,

94 U. S. 645; Taylor v. Ypsilanti, 105 Id. 71; Thompson v. Lee County, 3 Wall 330; Brown v. Mayor, 63 N. Y. 239, 244; Cooley's Const. Lim. 474, 477, 4th Edit. Dillon's Mun. Corp. § 46.

If, however, we are in error in our interpretations of the decisions in Cowgill v. Long; Schofield v. Walkins, and Keithsburg v. Frick, it results that when the bonds were executed, there was no decision of the State court in reference to the power of the legislature to enact the statute of February 28, 1867. In that case, the duty of his court is to determine, upon its independent judgment, what was the law of Illinois when the rights of the parties accrued. In Burgess v. Seligman, 107 U. S. 33, the court had occasion to re-examine all its prior adjudications concerning the obligation of the Federal courts to follow the decisions of the State courts upon questions of local law. Mr. Justice Bradley, speaking for the whole court, after observing that the Federal courts had an independent jurisdiction in the administration of State laws, co-ordinate with and not subordinate to that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of these laws, said: "So, when contracts and transactions have been entered into, and rights have accrued thereon, under a particular state of the decisions, or where there has been no decision of the State tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean to an agreement of views with the State courts if the question seems to be balanced with doubt." Any other rule, it was further said, would defeat "the very object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different States."

Assuming then, for the purposes of this case, that the question of the legislative power as here presented had not, when the bonds in suit were issued, been finally determined by the State court, we perceive no reason to doubt the correctness of the decision upon this point in St. Joseph Township v. Rogers. It is not claimed that the constitution of Illinois in terms, forbade retrospective legislation. But the statute in question is supposed to be obnoxious to that clause which provides that "the corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes." Numerous decisions of the State court, to which our intention was called in other cases, construe that provision as defining not simply the class of municipal officers upon whom the power of taxation, for local purposes, may be conferred, but the purposes for which that power may be exerted. Those decisions are to the effect, that, within the meaning of the constitution, the corporate authorities of a township like Santa Anna are the electors, and that while the construction of a railroad, through or near the township, would be a corporate purpose within the meaning of that instrument, a debt for that object could not be imposed upon it without the consent of its corporate authorities, that is, without the consent of the electors. These principles fall far short of sustaining the proposition that the curative clause of the act of February 28, 1867, was unconstitutional; for the legislature did not, in any just sense, impose a debt on Santa Anna township against the will of its corporate authorities, the electors. The act embraces only townships which, by a majority of their legal voters, at an election previously held, had declared for a subscription. That such majority was given at an election held by the township in the customary from is averred in the declaration and is admitted by the demurrer. The curative act only gave effect to the declared will of the electors. As the constitution of the State did not provide any particular mode in which the corporate authorities of a township ship should manifest their willingness or desire to incur a municipal debt for railroad purposes, we perceive no reason why the action of the majority of legal voters, at an election held in advance of legislative action, might not be recognized by the legislature, and constitute the basis of its subsequent assent to the creation of such indebtedness, and its ratification of what had been done.

In Grenada County, etc., v. Brogden, 112 U. S. 271, where somewhat the same question was involved, we said: "Since what was done in this case by the constitutional majority of qualified electors, and by the board of supervisors of the county would have been legal and binding upon the county had it been done under legislative authority previously conferred, it is not perceived why subsequent legislative ratification is not, in the absence of constitutional restrictions upon such legislation, equivalent to original authority." See also Thompson v. Perrine, 103 U. S. 815; Ritchie v. Franklin, 23 Wall. 67; Thompson v. Lee County, 3 Id. 327; City v. Lampson, 9 Id. 477, 485; Campbell v. City of Kenosha, 5 Id. 194; Otoe Co. v. Baldwin, 110 U. S. 15. The same principle was announced by the Supreme Court of Illinois in a very recent case (U. S. Mortgage Co. v. Gross, 93 Ill. 494) involving the constitutionality of a statute of Illinois, which was retrospective in its operation. "Unless," said the court in that case, "there be a constitutional inhibition, a legislature has power, when it interferes with no vested right, to enact retrospective statutes to validate invalid contracts or to ratify and confirm any act it might lawfully have authorized in the first instance." It cannot be denied that the legislature could lawfully have authorized a subscription by Santa Anna township to the stock of this road, upon the assent in some proper form of a majority of its legal voters. The act of 1867 interfered with no vested right of the township; for as an organization entirely for public purposes, it

had no privileges or powers which were not subject under the Constitution to legislative control. The statute did nothing more than to ratify and confirm acts which the legislature might lawfully have authorized in the first instance.

We infer from the arguments before us that the circuit court felt obliged by the decision in Township of Elmwood v. Marcy, 92 U. S. 289, to hold the act of February 28, 1867, to be unconstitutional. In that case, the main question was as to the liability of Elmwood Township upon bonds issued, in its name, by its supervisor and town clerk, under the authority, not of that act, but of one passed April 17, 1869, which legalized and confirmed and declared to be binding upon the township, an additional subscription to the stock of the Dixon, Peoria and Hannibal Railroad Company, pursuant to the vote of a majority of legal voters of the township at an election held at a time when the town had exhausted its power to subscribe. The bonds then in suit were issued on the 27th day of April, 1869. The majority of the court in that case, held the act of April 17, 1869, to be unconstitutional entirely upon the authority of Howard v. St. Clair Drainage Co., 51 Ill. 130; People v. Mayor, 51 Ill. 17; Hessler v. Drainage Co., 53 Id. 105; Livingston Wilder, Id. 302; Marshall v. Silliman, 61 Id. 218 and Wiley v. Silliman, 63 Id. 170. We have already seen that St. Joseph v. Rogers, *ubi supra* maintained the validity of the very act now before us, upon the authority as well of the then existing law of the State as declared by its highest court, as of our own decisions upon the general question of the power of the legislature to legalize that which it might have originally authorized. Although the decision in that case was cited by counsel in Elmwood v. Marcy, the court, in the latter case, did not refer to it or overrule it, but applied to Emwood bonds the principles announced in the latter decisions of the State court. While the courts of the United States accept and apply the construction of a State constitution or of a local statute, upon which the rights of parties depend, which has been fixed by the course of decisions in the State court, it is the settled doctrine of this court, that rights accruing under one construction will not be lost merely by a change of opinion in the State court; and where such rights have accrued, before the State court has announced its construction, the Federal courts, although leaning to an agreement with the State court, must determine the question upon their own independent judgment. If the decisions of the State court commencing with Howard v. St. Clair Drainage Co., would, if applied here, require an affirmance, we can not depart from the long established doctrine which makes it our duty to determine the rights of parties, where those rights depend upon the local law, according to that law as judicially declared at the time such rights accrued, or, in the absence of any such declaration, according to the law, as, in our judgment, it then was.

We are of opinion that the demurrer should have been overruled. The judgment is reversed, with directions for further proceedings in conformity with this opinion.

Reversed.

NOTE.—The writer purposes to consider in this note, 1. In what cases and under what circumstances the legislature may pass curative or legalizing statutes, particularly where the irregular or unauthorized acts of municipal corporations are concerned, and 2: In what cases and under what circumstances the United States courts will follow the decisions of the courts of last resort in the different States as binding upon them.

1. The general rule is well settled, as laid down in the principal case, that the legislature may ordinarily, by curative laws, retroactive in effect, legalize any irregular or unauthorized act, that they might have sanctioned or authorized in the first instance.[1] Thus irregularities and defects in legal proceedings are often cured in this way, where they do not affect the question of jurisdiction.[2] The rule in such cases is thus stated by Judge Cooley: "A retrospective statute curing defects in legal proceedings, where they are of the nature of irregularities only and do not extend to matters of jurisdiction, is not void on constitutional grounds. * * * If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings, is something which the legislature might have dispensed with the necessity of, by prior statute, then a subsequent statute dispensing with it retrospectively must be sustained. And so if the defect consists in doing something which the legislative might have made immaterial by prior law, it may also be made immaterial by subsequent law."[3] And it is no objection to such an act that it was passed during the pendency of a suit in which the invalidity cured by the act was sought to be taken advantage of.[4] Where, however, there is a want of jurisdiction over the subject-matter, the proceeding cannot be validated by a subsequent legislative enactment.[5] Thus, where property is taxed as city property, which lies entirely outside the corporate limits, such tax cannot afterwards be made legal and valid by legislative enactment.[6]

Curative statutes, in order to be valid, must, in all cases, be confined to validating acts which the legislature might previously have authorized.[7] Thus, where certain property subject to assessment, was omitted from an assessment, and the legislature attempted to validate such assessment as it stood without the omitted property, it was held that the legislature could not have exempted such property in the first instance because of the constitutional provision requiring uniform-

[1] Lockhart v. Troy, 48 Ala. 579; Emporia v. Norton, 13 Kans. 560; Muncie Nat. Bank v. Miller, 91 Ind. 441; Pompton v. Cooper Union, 101 U. S. 196; State v. St. L. etc. Ry. Co. 79 Mo. 420; s. c. 9 Mo. App. 532.

[2] Kearney v. Taylor, 15 How. 494; Muncie Nat. Bank v. Miller, 91 Ind. 441; Davis v. State Bank, 7 Ind. 316; Beach v. Walker, 6 Conn. 197; Schenley v. Com. 36 Penn. St. 29; Chestnut v. Shane's Lessee, 16 Ohio St. 599; Williams v. Supervisors, 21 Fed. Rep. 99.

[3] Cooley's Const. Lim. 371.

[4] Cooley's Const. Lim. 381, diting Bacon v. Callender, 6 Mass. 309; Watson v. Mercer, 8 Pet. 88; State v. Manning, 11 Tex. 402; Rich v. Flanders, 39 N. H. 304; Peevey v. Cabaniss, 70 Ala. 253.

[5] Strosser v. City of Ft. Wayne, 100 Ind. 443; Comrs. v. Carter, 2 Kans. 115; Hart v. Henderson, 17 Mich. 218; Cooley on Taxation, 227.

[6] Atchison, etc. R. R. Co. v. Maquillon, 12 Kans. 301.

[7] Cooley's Const. Lim. 381.

ity, and, therefore, it could not do it retrospectively, and the act was unconstitutional and void.[8]

The legislature may also validate invalid contracts, provided vested rights are not disturbed.[9] A statutory privilege, however, is not, ordinarily at least, a vested right.[10]

Municipal corporations are, in the main, creatures of the legislature and subject to its control,[11] and the rules above stated, apply where they are interested as well as in case of individuals. Thus it has been often held, as in the principal case, that the legislature may validate prior invalid subscriptions of a city to the stock of a railroad company.[12] So, irregularities in corporate organization or elections may be rendered valid by subsequent acts of the legislature.[13] And a city ordinance, null and void because not recorded, may be validated by legislative action.[14]

In short, it may be said generally that the legislature may, by subsequent act, validate and confirm previous acts of a municipal corporation otherwise invalid, provided contracts are not impaired, the rights of third persons injuriously affected, or some provision of the state constitution violated.[15] 2. In the Federal courts, the distinction between law and equity is still maintained, and in equity cases they will decide for themselves in accordance with what appears to them the better reason and best supported by authority, without being bound by the decisions on the subject in the State in which the cause arises.[16]

In cases at law, however, the decisions of the different State courts are often considered conclusive. On this subject, it may be stated as a general rule that the settled law of a State, as declared by the decisions of its court of last resort, will be followed by the Federal courts in all cases from such State relating to the construction of its constitution, and statutes,[17] or where a rule of real property of such State is involved.[18] Thus the construction by the State courts of their local statutes of limitations furnishes the rule of decision for the United States courts, so far as not in conflict with the Constitution of the United States.[19] And this is so, although the construction should differ from a former construction given by the United States Supreme Court to a similar statute in a different State.[20] So the United States courts have followed State courts in holding statutes in regard to taxing railroads under the State constitutions valid and constitutional.[21] This rule extends so far as to often compel the Federal courts to adopt the decisions of a State court, although not in accordance with their own opinion of the law,[22] and even though it should result in the change of a previous decision.[23]

The United States courts follow the latest decisions of the State courts in such cases, unless vested or contract rights are affected thereby.[24] Where, however, vested or contract rights have been acquired under former decisions of a State court, the Federal courts will not follow the State court in a change of decision.[25] And where such rights have accrued before the State court has announced its construction, it is well settled as stated in the principal case, that the Federal courts, although leaning to an agreement with the State court, will determine the question upon their own independent judgment.[26] When the construction of a statute has been judicially settled, it becomes a part of the contract and a change of construction is the same, in effect, as an amendment of the statute itself by the legislature.[27]

The United States courts are not bound by the decisions of any particular State court on questions of commercial law or general jurisprudence.[28] Nor where the question is, as to whether a State statute violates the obligation of contracts, or any provision of the constitution of the United States.[29]

A comparatively exhaustive list of the authorities bearing upon the general subject as to when the Federal courts consider themselves bound by the decisions of the State courts, will be found in the note below,[30] and authorities hereinbefore cited. W. F. ELLIOTT.

Indianapolis, Ind.

[8] People v. Lynch, 51 Cal. 15; s. c. 21 Am. Rep. 676.

[9] Cooley's Const. Lim. 374; Lewis v. McElvain, 16 Ohio St. 347; Andrews v. Russell, 7 Blackf. 474; Savings' Bank v. Allen, 28 Conn. 97.

[10] Cooley's Const. Lim. 383.

[11] 1 Dillon Mun. Corp. § 54; See also New Orleans v. Clark, 95 U. S. 644.

[12] Bridgeport v. R. R. Co. 15 Conn. 475; Gardner v. Haney, 86 Ind. 17; McMillan v. Boyles, 6 Ia. 330; Board v. Bright, 18 Ind. 93; Starin v. Town of Genoa, 23 N. Y. 439; Brown v. Mayor, 63 N. Y. 239; Thompson v. Lee Co. 3 Wall. 330; Town of Duanesburgh v. Jenkins, 57 N. Y. 179, and authorities cited in principal opinion.

[13] Gardner v. Haney, 86 Ind. 17: Syracuse Bank v. Davis, 16 Barb. 188.

[14] Schenley v. Com. 36 Penn. St. 29.

[15] 1 Dillon Mun. Corp. § 79; State v. Newark, 3 Dutch. (N. J.) 187; Municipality v. Theatre Co. 2 Rob. (La.) 209; New Orleans v. Clark, 95 U. S. 634; Town of Duanesburg v. Jenkins, 57 N. Y. 177; Creighton v. San Francisco, 42 Cal. 446; Bissell v. Jeffersonville, 24 How. 287; Cooley's Const. Lim. 379; Compare Mosher v. School District, 44 Ia. 122.

[16] Neves v. Scott, 13 How. 272; Curtis's Jurisdiction of U. S. Courts, 201, *et seq.*

[17] Town of South Ottawa v. Perkins, 94 U. S. 260; Commercial Nat. Bank v. City of Iola, 2 Dillon, C. C. R. 353; affirmed, 20 Wall. 655; Olcott v. Supervisors, 16 Wall. 678.

[18] Townsend v. Todd, 91 U. S. 452; Sugden v. Williamson, 24 How. 427; Fairfield v. Co. of Gallatin, 100 U. S. 47; Jackson v. Chew, 12 Wheat. 167; McKeen v. Delancy, 5 Cranch, 22, 32.

[19] Green v. Lessee of Neal, 6 Pet. 291; Davie v. Briggs, 97 U. S. 628; Harpending v. Dutch Church, 16 Pet. 455; Leffingwell v. Warren, 2 Black, 599.

[20] Davie v. Brigg, 97 U. S. 628. 638; Green v. Lessee of Neal, 6 Pet. 291.

[21] State R. R. Tax Cases, 92 U. S. 575.

[22] Supervisors v. U. S. 18 Wall. 71, 82; Walker v. State Harbor Comrs. 17 Wall. 648.

[23] Sugdam v. Williamson, 24 How. 427; Fairfield v. Co. of Gallatin, 100 U. S. 47.

[24] Douglass v. Co. of Pike, 101 U. S. 677, 686.

[25] Taylor v. Ypsilanti, 105 U. S. 60; City v. Lamson, 9 Wall. 477, 485; Olcott v. Supervisors, 16 Wall. 678.

[26] Foote v. Johnson Co. 6 Cent. L. J. 345; Westerman v. Cape Girardeau Co., 7 Cent. L. J. 353; Burgess v. Seligman, 107 U. S. 33; Rowan v. Runnels, 5 How. 134; Gelpeke v. City of Dubuque, 1 Wall. 175.

[27] Douglass v Co. of Pike, 101 U. S. 677; Opinion of the court, 58 N. H. 623; Gelpeke v. City of Dubuque, 1 Wall. 175. In the case last cited, Swayne, Justice, says: "The same principle applies where there is a change of judicial decision as to the constitutional power to enact the law. To this rule, thus enlarged, we adhere. It is the law of this court. It rests upon the plainest principles of justice. * * * We shall never immolate truth, justice, and the law, because a State tribunal has erected the altar and decreed the sacrifice." Opinion, page 206.

[28] Township of Pine Grove v. Talcott, 19 Wall. 666; Gloucester Ins. Co. v. Younger, 2 Curtis C. C. Rep. 322; Curtis Jurisdiction of U. S. Courts, 206.

[29] Ohio Life & Trust Co. v. Debolt, 16 How. 432, 433; Curtis' Jurisdiction U. S. Courts, 208.

[30] Polk's Lessee v. Wendal, 9 Cranch, 87; Thatcher v. Powell, 6 Wheat, 119; Preston's Heirs v. Bowman, Id. 580; Daly's Lessee v. James, 8 Id. 495; Elmendorf v. Taylor, 10 Id. 152; Shelby v. Guy. 11 Id. 361; Fullerton v. Bank of United States, 1 Pet. 604; Gardner v. Collins, 2 Id. 58; United States v. Morrison, 4 Id. 124; Groves v. Slaughter, 15 Id. 449; Swift v. Tyson, 16 Id. 1; Carpenter

CORPORATION—RELATIONS WITH ITS DIRECTORS — ILLEGAL AND VOID CONTRACT—AGREEMENT TO PAY DIRECTOR FOR PAST SERVICES, VOID.

BENNETT v. ST. LOUIS CAR ROOFING CO.

St. Louis Court of Appeals, November 10, 1885.

1. A contract between a corporation and a director thereof, embodied in a resolution, for the passage of which the director's vote was necessary and was given, is invalid.

2. An agreement to pay a director for past services rendered to the corporation, is deemed to be without consideration.

3. A petition which states that the plaintiff was employed as the secretary of a corporation at a given salary under a resolution passed by a majority vote of the board of three directors, of which he was one, does not state a valid contract.

Appeal from the St. Louis Circuit Court. Reversed.

The facts are stated in the opinion.

Messrs. *Leo. Rassieur* and *Dexter Tiffany*, for appellant:

Directors stand in the relation of trustees to the stockholders, and cannot dispose of the trust property to promote their individual interests; hence, compensation fixed by themselves after they are elected, the office not being salaried prior to their resolution, the resolution does not amount to a contract. Dunstan v. Gas Co., 3 Barn. & Ad. 125–129; Holder v. R. Co., 71 Ill. 106; Cheeney v. R. Co. 68 Ill. 570.

Fixing compensation of officers should be authorized by organic law or by-law; otherwise the stockholders have a right to presume that they are to act as trustees gratuitously. Loan Asso. v. Stonemetz, 29 Pa. St. 536.

There being no by-law or legal resonlution, the vote of the board cannot be considered a contract with the officer. Butts v. Wood, 37 N. Y. 318.

F. M. Estes, for respondent.

A corporation loses its general power of removal after it makes a special contract. In such case it is bound like a private person. Trustees v. Shaffer, 63 Ill. 243.

Where it is shown that a railway director rendered services for the company apart from his duty as a director, he may recover for such services. R. Co. v. Sage, 65 Ill. 328.

When a director of a railway company is appointed by resolution, an agent to perform duties not pertaining to his office of director, he may recover for such services when rendered by him. Cheeney v. R. Co. 68 Ill. 570; Shackelford v. R. Co., 37 Miss. 202.

ROMBAUER, J. delivered the opinion of the court:

Plaintiff's petition states that on or about July 1, 1883, he was, by a majority vote of the board of directors of defendant, elected to fill the position of vice president and secretary of defendant for the period of one year. That, on said above mentioned date by a majority vote of the board of difectors of defendant, a salary of $150 per month was voted plaintiff for his services as aforesaid.

That plaintiff performed all of the services incident to said office and incumbent upon him as such vice-president and secretary, for the period of one year. That he had been paid on account for said services the sum of $1,050, leaving a balance due plaintiff of $750; that he has demanded of defendant said sum, and payment thereof refused; whereof he prays judgment.

The answer admits all the allegations in plaintiff's petition, except that any balance was due to him, and sets up by way of avoidance, that plaintiff was one of the directors of said company, and that he being present at a meeting of said board of directors held December 28, 1883, it was determined by a majority vote of the said board that from and after February 1, 1884, the office of vice president and secretary should cease to be a salaried office. That plaintiff was fully paid up to said first day of February, 1884, etc.

The reply admitted the resolution of December 28, 1883, in defendant's presence, but claimed that it was passed against defendant's protest, and then states: Plaintiff for a further reply states that the board of directors of defendant, was composed of only three persons, and plaintiff denies that he is bound by the action of said board of directors.

On the trial of the cause, defendant offered in evidence the resolutions of the board of directors of July 6, 1883, and December 28. 1883; but the court rejected the evidence as immaterial, stating that the plaintiff was entitled to judgment upon the admissions contained in the pleadings, and rendered judgment accordingly.

Whether this ruling of the court was correct, is the only matter submitted for our consideration upon this appeal.

That directors stand in the relation of trustees to the stockholders, and cannot dispose of the trust property to promote their individual interests, may be conceded. That, however, does not prevent their employing in good faith, one of their number to perform services for the corporation, which are not necessarily incident to his duties as director. The compensation, however,

---

v. Providence, etc. Co., Id. 495; Carroll v. Safford, 3 How. 441; Rowan v. Runnells, 5 Id. 134; Smith v. Kernochen, 7 Id. 198; Nesmith v. Sheldon, Id. 812; Van Rennslaer v. Kearney, 11 Id. 297; Webster v. Cooper, 14 Id. 488; Beauregard v. New Orleans, 18 Id. 497; Morgan v. Curterius, 20 Id. 1; League v. Egery, 24 Id. 264; Mercer Co. v. Hackett, 1 Wall. 83; Seybert v. Pittsburg, Id. 272; Christy v. Pridgeon, 4 Wall. 196; Butz v. City of Muscatine, 8 Wall. 575; Boyce v. Tabb, 18 Wall. 546; Ober v. Gallagher, 93 U. S. 199; Oates v. National Bank, 100 U. S. 239; Barrett v. Holmes, 102 U. S. 651; Thompson v. Perrine, 103 U. S. 806; Carroll Co. v. Smith, 111 U. S. 556; Gibson v. Lyon, 115 U. S. 439, and authorities hereinbefore cited.

should be fixed by by-law or resolution before the services are actually rendered, so as to contain the necessary elements of a contract supported by sufficient consideration.

In Dunstan v. Gas Co. 3 Barn. & Ad. 125; Loan Asso. v. Stonemetz, 29 Pa. 536; Holder v. R. Co., 71 Ill. 106, and Butts v. Wood, 37 N. Y. 318, which are relied on by the defendant appealing herein, the vote or resolution giving the directors compensation was providing compensation for past services and was, therefore, not supported by a sufficient consideration. We are, therefore, of opinion that if the admissions of the pleadings warrant a judgment in favor of plaintiff in other respects, the fact admitted, that he was a director of the corporation is no ground in itself for disturbing the judgment rendered.

But do the pleadings in this case admit a valid contract between plaintiff and defendant, whereby plaintiff was employed by defendant for the period of one year, at a fixed compensation? Unless these facts stand admitted by the pleadings, the judgment of the court cannot be supported. The petition avers no such employment, unless it can be inferred from the allegations that "by a majority vote of the board of directors, plaintiff was elected to fill the position of vice president and secretary of defendant for the period of one year," and that by a majority vote of the board of directors, a salary of $150 per month was voted plaintiff for his services as aforesaid." These allegations do not state the fact of employment of the plaintiff by defendant for a time certain at a fixed salary, but the evidence by which such employment of plaintiff is sought to be established. They also fail to show when the year was to begin or end, or whether the aforesaid services were plaintiff's services as an officer from month to month, or during the entire year. The answer admits no more than the petition states. That averments in pleadings where they admit of a double sense, have to be taken in the sense most strongly against the pleader proffering them, is elementary; and as there was no evidence adduced, but judgment rendered upon the pleadings, the rule, that defective averments are cured by verdict has no application.

There is, however, a further and more serious objection to the ruling of the court. The pleadings admit that the board of directors consisted only of three members, of whom the plaintiff was one. If the salary was voted to him by a majority vote of the board of directors, the inference is not negatived that his own vote accomplished this result; his vote and that of one other director. An inference of a valid contract does not, therefore, arise necessarily, although his allegations be literally true, because, as we said in Patrick v. Gas Co. 3232, Court of Appeals, the director must establish his contract by proof that he dealt with other agents of the corporation who had power to act in the premises. To the same effect is Butts v. Wood, (*supra.*) If his own vote was essential to give life to the contract of employment and compensation, then the contract cannot be upheld against the corporation.

We must hold that the court committed error in rendering judgment in favor of plaintiff upon the pleadings. Parties should have leave to amend their pleadings before a re-trial of the cause, so that the merits of the controversy can be fairly determined by the proof.

Judgment reversed and cause remanded.

All the judges concur.

NOTE.—The statement of the rule in the principal case fully accords with the authorities, and is a clear exposition of the law.

The rule that directors cannot bind the corporation by contract with themselves, by which one of their number will derive a pecuniary advantage, springs from the principles which control the fiduciary relations of such directors and the corporation. The directors are trustees of the corporation and stockholders. They occupy a position of the highest trust and confidence. They cannot legally exercise their powers for their own personal ends, cannot make profits out of the trust property or office, but are required to exercise the highest good faith in executing their trust. These principles are elementary, and are rigidly enforced in every nation where an enlightened jurisprudence is administered. Their usefulness and necessity become more and more apparent. No rules of law are better settled or understood, and there are none of more frequent application, or more useful in their results.[1]

The language of the Supreme Court of Alabama, in Bank v. Collins,[2] where directors undertook to vote themselves salaries for services rendered the corporation, is to the point. The court said (page 98): "He cannot, at the same time, be a servant of the directors and a director too. The relation of master and servant in the same individual is incompatible and cannot exist. It would be found impracticable to secure fidelity to the execution of a trust if the same person is to perform services with respect to it, and afterwards judge, not only of the manner in which the services are performed, but also the compensation to be allowed therefor. It would be impossible, when the director became the servant, to determine that the necessity of his services was not induced by his own acts. Common sense would seem to lead to the conclusion that such services would be considered as merely gratuitous, and that any compensation to be allowed for them must depend entirely upon the will of the person for whom they were rendered. Such is the light in which they are consideredby law, and no action can be maintained to enforce compensation." The directors hold their position for the purpose of managing the concerns of the corporation, and not for the purpose of voting themselves or their colleagues, compensation.[3]

If no salary is agreed upon, a director can recover nothing from the corporation for services rendered.[4]

[1] Butts v. Wood, 37 N. Y. 317, 319; See Bent v. Priest, (S. C. Mo. 1885), 1 Western Reporter (No. 17), p. 749; s. c. 25 Am. Law Reg. pp. 125-133; with note, where full collection of authorities and illustrations are given.

[2] 7 Ala. 95, *et seq.*

[3] Id.

[4] The Maux Ferry Gravel Road Co. v. Branegan, 40 Ind. 361, 364, *et seq;* Holder v. R. R. Co. 70 Ill. 106, 108; Gridley v. L. B. & M. Ry. Co. 74 Ill. 200; Austin City R. R. Co. v. Swisher (Texas, 1885), 15 Reporter, 760.

"It would be a sad spectacle to see the managers of any corporation, ecclesiastical or lay, civil or eleemosynary, assembling together and parcelling out among themselves the obligations or other property of the corporation in payment for their past services."[5]

"It is well that the rule is so. Corporate officers have ample opportunties to adjust and fix their compensation before they render their services, and no great mischief is likely to result from compelling them to do so. But if, on the other hand, actions are to be maintained by corporate officers for services which, however faithful and valuable, were not rendered on the foot of an express contract, there would be no limitation to corporate liabilities, and stockholders would be devoured by officers."[6] And the principle is not affected, although the corporate authorities by subsequent resolution agree to pay for past services. A recovery at law cannot be had on such agreement. It is without consideration and void.[7]

That the directors may not consume that which they are appointed to preserve, their compensation must be expressly agreed upon, before it can be recovered by action at law.[8]

Directors of a corporation have no authority to appropriate its funds in paying claims which the corporation is under no legal or moral obligations to pay; as in the case for past services which had been rendered and paid for at a fixed salary previously agreed upon, or under a previous agreement that there should be no compensation for them.[9]

Butts v. Wood,[10] was a suit to set aside proceedings of defendants as directors of the corporation in voting to a person, who occupied the position of secretary and treasurer, compensation for services. A resolution was passed by the board of directors fixing such secretary and treasurer's salary, which resolution had never been repealed. Afterwards, at a meeting of the board of directors of the company there were present three of the five directors, viz: the father of the secretary and treasurer, the secretary and treasurer himself, to whom compensation was allowed, and his kinsman. The claim in question was allowed at this meeting, and ordered to be paid, which claim was greater than he would have received under the resolution of the board fixing his salary. The court, in passing upon this question, said (page 318): "The board, as thus constituted, had no authority to entertain the bill in question, or anything in relation to it. Daniel Wood, being the claimant, was disqualified from acting because he could not deal with himself, and without him there was no quorum of the directors, and they had no authority to transact business. The relation between Daniel Wood and that of the corporation was that of trustee and *cestui que trust*. This being the case, I am disposed on this ground alone to think that the action of these directers was void. * * * A careful examination of the testimony in this case, shows Wood could not have enforced his claim against the company; and the circumstance under which it was allowed and paid were a fraud upon the stockholders. To permit such a transaction to stand, would be a reproach to the administration of justice."

In the recent case of Jones v. Morrison,[11] there were four directors present when the resolution fixing their salaries was passed; of these it fixed the salaries of three. The court said (page 140): "There is no question that, unless otherwise provided in the articles of incorporation, the board of directors has the authority to fix the compensation of officers of the corporation. When, however, as directors, they fix the compensation for their own services, either as directors or other officers, their act is not necessarily valid. They are agents of the corporation, and, as, in case of other agents, their acts on behalf of their principal in matters where their own interests come in conflict with those of the corporation—where their self-interest may tend to deprive the corporation of the full, free and impartial exercise of the judgment and discretion which they owe to their principal—are looked upon and scrutinized with great jealousy by the courts. Their acts in such cases are *prima facie* voidable. At the election of the corporation or of a stockholder * * * * the rule is applied rigorously to votes giving themselves compensation;[12] so that they cannot properly act on, nor form part of a quorum to act on, a proposition to increase their compensation."

In Gardner v. Butler,[13] it is held that where directors are employed in the business of the company and agree to pay themselves a stipulated sum, the agreement is void, and no recovery can be based upon such contract for such services as they render. They can recover upon the *quantum meruit*.[14] In Holder v. R. R. Co.,[15] it is said that these rules should be limited to officers who have the management and control of the property and affairs of the company. Where the office of treasurer, secretary or attorney, etc., is held by a mere stockholder or other person not connected with the directory, the rule should not apply, as they are wholly disconnected from the management and disposition of the property, and are not tempted to misapply the funds; or when they perform duties disconnected from their office, and no rule of public policy is thereby violated.[16]

EUGENE MCQUILLIN.

St. Louis, Mo.

5 Loan Association v. Stonemetz, 29 Pa. St. 534.
6 Per Woodward, C. J. in Kilpatrick v. Penrose Ferry Bridge Co. 49 Pa. St. 118, 121.
7 Id.; R. R. Co. v. Ketchum, 29 Conn. 170; Dunstan v. Gas. Co. 3 B. & A. 125.
8 Kilpatrick v. Penrose Ferry Bridge Co. 49 Pa. St. 122.
9 Jones v. Morrison, 31 Minn. 140, 147, 148.
10 37 N. Y. 317.
11 31 Minn. 140, *et seq.*
12 Thompson on Officers of Corporations, 351 and notes.
13 30 N. J. Eq. (3 Stewart), 702, 721, 722.
14 Levisee v. R. R. Co. 27 La. Ann. 641, 642.
15 71 Ill. 106, 108.
16 See further the following cases upon the general proposition: Coleman v. 2nd Ave. R. R. Co. 38 N. Y. 201, 203-4; Paine v. The Lake Erie, etc. R. R. Co. 31 Ind. 282; Freeman v. Steine, 15 Phila. (Pa.) 37, 44, 45; N. Y. etc. R. R. Co. v. Ketchum, 27 Conn. 170; Hodge v. R. & B. R. R. Co. 29 Vt. 220, 224, 225; Angel & Ames on Corp. (11th ed.), p. 350, § 315.

WEEKLY DIGEST OF RECENT CASES.

ALABAMA, ... 3, 4
CONNECTICUT, ... 6, 14
ILLINOIS, ... 9
INDIANA, ... 17
IOWA, ... 16
KANSAS, ... 13
MASSACHUSETTS, ... 1, 8
MICHIGAN, ... 18
MINNESOTA, ... 12, 23
MISSOURI, ... 10
NEW HAMPSHIRE, ... 11
NEW YORK, ... 2
PENNSYLVANIA, ... 15, 20, 24
UNITED STATES, ... 5, 19, 22
WISCONSIN, ... 7, 21

1. AGENCY. — *Principal and Agent — Commission Broker—Sale by—Limit of Price Fixed by Con-*

signor—Evidence of Previous Transactions Inadmissible.—Where leather is consigned to a broker or commission dealer, with instructions in the invoice not to sell below a certain price, and he sells the goods at a price less than that limited, he is liable to his consignor for the difference between what the leather actually brought, and what it would have brought if sold within the limit set for him. Where a broker sells goods at a price less than that limited by his consignor, in an action by the latter to recover the balance alleged to be due, evidence relating to other transactions concerning which no controversy has arisen, and which have been settled, is inadmissible as tending to show that the broker acted in a similar manner on previous occasions, when his acts were ratified by his principal, and that he was justified in selling goods contrary to his principal's orders in subsequent transactions. *Loehnberg v. Atherton*, S. Jud. C. Mass. May 8, 1886. N. E. Rep. 6, 768.

2. ———. ———. *Brokers—When Entitled to Commissions — Name of Purchaser.*—When a broker, employed to effect a sale, has found a purchaser willing to take upon the terms named, and of sufficient responsibility, he has performed his contract, and is entitled to the commissions agreed upon. The fact that, in the telegram announcing sale, the broker did not name the purchaser, would not change the rule. *Duclos v. Cunningham*, N. Y. Ct. of Appeals, N. Y. April 30, 1886. N. E. R. Vol. 6, 790.

3. ATTACHMENT—*Affidavit—Two or More Grounds for, may be stated Cumulatively.*—An affidavit for an attachment may state, cumulatively, that the defendant is about to dispose of all his property fraudulently, that he has fraudulently disposed of a part of his property, and that he has money, property, and effects, liable to satisfy his debts, which he fraudulently withholds. In delivering the opinion of the court, upon this point, Clopton J., said: "The rule is subject to the qualification, that the alleged grounds are consistent with each other, and that uncertainty in the affidavit shall not occur. McColdum v. White, 23 Ind. 43; Keith v. Stetter, 25 Kan. 100; Klink v. Evans, Gardner, & Co., 36 Ga. 89; Rosenbum v. Fifield, 12 Bradwell, 302; Pearce v. Hawkins, 62 Tex. 434. * * * * * While the practice is objectionable as unnecessary, we discover no valid reason, why, if two or more consistent grounds exist, the affidavit may not disclose them; or why the averment of two or more statutory causes should vitiate an attachment, which either of them singly, is sufficient to sustain. When distinct grounds are stated in the alternative, the real ground is uncertain, as it does not clearly appear which is true; but when coupled conjunctively both are verified. The officer, before issuing the attachment, must require an affidavit, that one of the enumerated causes exists. Code, § 3255. The statement of one is essential; but there is no express or implied prohibition, that more than one shall be stated if the debtor by his conduct has created two or more." *Smith v. Baker*, Supreme Court of Alabama, Dec. Term 1885-86.

4. CONSTITUTIONAL LAW.—*Library Tax Fee—Constitutional and not Repugnant to Taxing Power of State.*—Where it is provided that in all suits decided on appeal in the Supreme Court there shall be taxed, as costs, the sum of six dollars, in each case, to be collected as othir costs, such law is neither repugnant to the taxing power of the State, nor the constitution. In rendering the opinion of the court Per Curiam, it is said: "That the general assembly possess the constitutional power to enact laws of this character is axiomatic, unless there be some clause in the State or Federal constitution which directly, or indirectly, prohibits it. Davis v. State, 68 Ala. 58; Maugan v. State, 76 Ala. 60. The taxing power is no where limited to property in the strict sense of the term. It may extend as well to franchises, privileges, and admitted constitutional rights. The subjects or objects of taxation are within the discretion of the legislative department, within constitutional limits, and so with their classification, so long as the principle on which it is made is not arbitrary, capricious, or oppressive in operation. Moog v. Randolph, 77 Ala. 597, 603. We are unable to discover any clause in the constitution to which this law is repugnant. It does not debar any litigant from prosecuting or defending any suit in the Appellate Court within the meaning of § 2 of declaration of rights. It merely regulates the right by a small tax in no wise onerous or prohibitory in its nature. A constitutional right is often subject to regulation by reasonable incidental taxation, although it cannot be impaired or destroyed under the device or guise of being regulated. Joseph v. Randolph, 71 Ala. 499, S. C. 46 Amer. Rep. 347. It is equally obvious that this tax does not violate § 14, of the declaration of rights, providing that the courts shall be open, and "right and justice shall be administered without sale, denial, or delay." It is certainly no sale of justice. This clause is known to have been taken in substance from Magna Charta; our history shows that its chief purpose was to assail the existing evil of anciently holding courts in clandestine sessions, and of paying fines to the king and his officers, for delaying or expediting law suits, and it has no reference to the exercise by the sovereignty of the power of legitimate taxation. The precise point has been settled in other States. Harrison v. Willis, (7 Heisk. 35) S. C. 19 Amer. Rep. 604; State v. Commissioners, (4 Neb. 537), S. C. 19 Amer. Rep. 641." *Swaun v. Kidd*, Sup. Court Ala. Dec. Term, 1885-86.

5. ——— ———. *Police Power—Louisiana Quarantine Laws—Regulation of Commerce — Effect of Acts of Congress—Tonnade Tax—Preference Given Port of Particular State—Const. U. S. Art. 1 § 9.*—The system of quarantine laws established by statutes of Louisiana is a rightful exercise of the police power for the protection of health, which is not forbidden by the constitution of the United States. While some of the rules of that system may amount to regulations of commerce with foreign nations or among the States, though not so designed, they belong to that class which the States may establish until congress acts in the matter by covering the same ground or forbidding State laws. Congress, so far from doing either of these things, has, by the act of 1799 (chapter 53, Rev. St.) and previous laws, and by the recent act of 1878, (20 St. 37,) adopted the laws of the States on that subject, and forbidden all interference with their enforcement. The requirement that each vessel passing a quarantine station shall pay a fee fixed by the statute for examination as to her sanitary condition, and the ports from which she came, is a part of all quarantine systems, and is a compensation for services rendered to the vessel, and is not a tax, within

the meaning of the constitution, concerning tonnage tax imposed by the States. Nor is it liable to constitutional objection as giving a preference for a port of one State over those of another. § 9 of the first article of the constitution is a restraint upon powers of the general government, and not of of the States, and can have no application to the quarantine laws of Louisiana. *Morgan etc. Co. v. Board of health La.* S. C. U. S. May 10, 1886. S. C. Rep. Vol. 6, 1115.

6. CRIMINAL LAW—*Cruelty to Animals*—All offenses involving continuous action, and which may be continued from day to day, may be so alleged. Cruelty to animals is an offense of a continuing nature, and may consist of overworking, under-feeding or depriving them of proper protection; and a demurrer to a complaint which charges all these acts in separate counts, is properly overruled. *State v. Bosworth*, S. C. Conn., May 6, 1886; N. Eng. Rep. Vol. 1, 928.

7. ———. *Embezzlement—Municipal Officer—Bonds—Possession of Property*—Un-issued bonds of a city, which are in the custody of the city comptroller, are the subject of embezzlement, and the fact that the city may not be liable upon them has nothing to do with the case. A comptroller who is *ex officio* secretary of the board of county commissioners, and, as such, has the custody of certain municipal bonds, has such a possession thereof as will render a wrongful conversion of them, embezzlement. *State v. White*, S. C. Wis. May 15, 1886; N. W. Repr. Vol. 28, 202.

8. ———. *False Pretenses—Indictment — Proof — Letters Between Two Defendants — Admissibility in Evidence.*—An indictment charging a defendant with obtaining money by false pretenses is supported by proof that he represented to A. that he owned an interest in a concern which sold certain medicines, remedies, etc., upon which the defendant had a patent or secret formula for the preparation of, from which great gains were derived; that by these representations he induced A. to purchase an interest in the concern for a sum of money; and that as a fact the concern had no stock or remedies on hand, and did not receive profits from sales, and that the defendant had induced other persons to purchase interests in the concern at great loss to them. Upon the trial of two defendants charged with obtaining money by false pretenses, letters written by one of the defendants to the other are admissible, when produced by the one to whom they were written, as tending to show that the two were engaged in carrying out a scheme to defraud. *Commonwealth v. Blood*, S. Jud. Ct. Mass. May 7, 1886; N. E. Rep. Vol. 6, 769.

9. ———. *Larceny—Burden of Proof—Recent Possession of Stolen Property — Alibi—Witness—Credibility—Falsus in Uno, Falsus in Omnibus—Trial—Instruction—Reviewing Evidence—Incompleteness Cured by Further Instructions—Witness Impeachment—Discharge by Employer—Contrary Testimony at Former Proceeding—Horse Stealing—Verdict—Value Need Not be Found.*—A defendant in an action of larceny is not required to "satisfactorily" explain his recent possession of stolen property in order to rebut the presumption of guilt arising therefrom; and, where an *alibi* is relied on, it is not the rule of law that the *alibi* must be "clearly and satisfactorily" established where the evidence otherwise makes a *prima facie* case against the defendant. The burden is on the people throughout; and if, after considering the evidence introduced by him, as to either, or both of these questions, in connection with all the other evidence in the case, and giving due consideration to the entire evidence, the jury shall have a reasonable doubt of the defendant's guilt, he cannot be convicted. The rule that the testimony of a witness who has testified falsely as to any material fact may be disregarded *in toto* is a rule of permission, and not a mandatory rule; and it is only where such falsity is wilful that the rule applies. Instructions which fail to bring out these features of the rule are erroneous. An instruction calling the attention of the jury to certain portions of the evidence on a certain point is misleading, unless it also calls their attention to all the evidence affecting that point. Where instructions are incomplete, they may be remedied by supplementary instructions: and inaccuracies of instructions may be remedied by other instructions directly referring thereto; but repugnancy or contradiction of instructions cannot be remedied by a repetition of the correct instruction. A witness may be impeached by showing that his reputation for truth and veracity is bad; but the fact that he has been discharged by his employer is immaterial and improper. It is improper to attempt to show that a witness testified differently at a former hearing, or before the grand jury, until a proper foundation has been laid therefor. By paragraph 224 of the Criminal Code (1 Starr & C. St. 803), horse-stealing is erected into a separate offense, independent of either grand or petit larceny, (1 Starr & C. St. pars. 215, 216,) and the value of the stolen property need not be found by the verdict. *Hoge v. People*, S. C. Ill. May 15, 1886; N. E. Rep. Vol. 6, 796.

10. EJECTMENT—*24 Years Statute of Limitations—Construction of Sections 3222. 3219, 3224, Rev. Stat. 1879—Valle v. Obenhouse (62 Mo. 81.) Overruled and Judge Hough's Dissenting Opinion Adopted.*—The rule of Valle v. Oberhouse (62 Mo. 81), that the husband is understood to be jointly seized of his wife's estate, and during the existence of coverture, he is not tenant by the courtesy, but only seized by right of his wife, and if there be a disseizin, it is of the joint estate, and they must jointly bring an action to recover possession, and that the Statute of Limitation will begin to run from the date of disseizin against both, fully examined with reference to Missouri decisions, and the reason of the statute, and that case is overruled, and the views expressed by Hough, J., in the dissenting opinion of that case, fully adopted. The disability of coverture of a married woman, by its own force, under the marital law, operates to transfer her seizin and possession of her fee simple estate to her husband, and with it the consequent right of action; 76 Mo. 214; 79 Mo. 106; 94 Mo. 318, 330. Whoever is entitled under the law to possession, "*ex necesitate*," is entitled to the right of action. Section 3222, Rev. Stat. 1879, bars only those entitled to sue, and consequently where there is no right of action there can be no bar, as there is nothing for the statute to operate upon and set the same in motion. "A tenant by the curtesy initiate, may sue alone for the possession of his wife's lands, and for damages for withholding it. * * * * * * At common law the husband's interest in the estate of which

his wife was possessed at the time of the marriage, was a freehold, he alone having the right of entry, and the present right of exclusive enjoyment. The wife could not recover the land from a stranger, even though her husband was joined as defendant, and disclaimed title and admitted the wife's right of possession:" Sedgwick & Wait on Trial of Title to Lands, § 219; 20 Ohio St. 128; 70 N. C. 670; 53 Mo. 305; 76 Mo. 207; 60 Mo. 421, 430. In this case, the wife during coverture, by reason of the husband's curtesy, initiate, had no right of action, and that, after her death her heirs had none by reason of the husband's curtesy, consummate, prior to his death, and for these reasons the plaintiffs are not barred by the Statute of Limitations. *Dyer v. Wittler*, S. C. Mo. April Term, 1886.

11. EMINENT DOMAIN—*Value of Land Taken—Market Value — Compensation to Land-Owner, How Estimated.*—In determining the value of lands appropriated for public purposes, the same considerations are to be regarded as in a sale between private parties; the inquiry in such cases being, what, from their availability for valuable uses, are they worth in the market? As a general rule, compensation is to be estimated by reference to the uses for which the appropriated lands are suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future. *Low v. Concord, etc. Co.*, S. C. N. H. March 12, 1886; Atl. R. Vol. 3, 739.

12. EQUITY—*Suit to Quiet Title—Defense—Powers —Will—Executors' Power to Sell Land.*—Plaintiff alleged that a certain conveyance by him to one R. was merely in trust for certain purposes and that the trust had been fully performed and terminated and asked that the title of the property be adjudged in him. *Held*, that defendants, assigns of R., had a right to set up any other title, from any source, which they had to the property, and to ask, as affirmative relief, that they be adjudged the owners; and that they were not limited to asserting a claim of title under the deed from plaintiff to R. The will of R. *held* to give his executors (and hence, under the statute, his administrator with the will annexed) power to sell and convey real estate. *Cheever v. Converse*, S. C. Minn. May 11, 1886; N. W. Rep. Vol. 28, 217.

13. ESTOPPEL — *Judgment — Joint Defendants— Damages—Separate Suits—Costs.* — Where several persons jointly commit an injury, the liability is joint and several, and the party injured may sue all of them in a single action, or he may sue them separately at the same time; but, although several judgments may thus be obtained, there can be but one satisfaction, and the acceptance of payment in full upon the judgment obtained against one of such persons will operate as a bar to the further prosecution of actions for the same injury against any of the others. Although several separate suits may be brought for a joint liability, yet, where the injury is an entirety, the damages resulting therefrom cannot be apportioned among the wrong-doers, nor divided into separate demands; and where the injured party sues one of the wrong-doers, and demands only a part of the damages which he suffered by the injury, a recovery and satisfaction therein will operate as a bar to any further claim of damages against the others. In such a case, where separate suits are instituted against the wrong-doers, the plaintiff is entitled to the costs which had accrued in all of the cases up to the time when satisfaction is made in any of them, but the defendants are entitled to recover the costs that may subsequently accrue in the other cases. *Westbrook v. Mize*, S. C. Kans., May 7, 1886; Pac. Rep. 881.

14. EVIDENCE—*Practice —Newly-Discovered Evidence—New Trial.*—Direct evidence of a forgery and of the physical impossibility of an instrument having been signed, by one of those by whom it purports to be signed, is a good ground for granting a new trial, for newly discovered evidence, where the evidence upon the question at the former trial consisted of opinions as to the genuineness of signatures. *Knowles v. Northrop*, S. C. Conn. Feb. 13, 1886; N. Eng. Rep. Vol. 1, 927.

15. EXECUTORS AND ADMINISTRATORS.—*Grant of Letters—Children—Discretion of Register— Eldest Son—Effect of Register's Decision—Disqualification of One of a Preferred Class—Insolvency—Poverty.*—Where a decedent leaves children, but no widow, the children, as a class, are entitled to administration, and the selection is left to the discretion of the proper judicial officer. He is not bound to select the eldest son; but, other things being equal, seniority might incline the balance of judicial discretion. But having chosen the eldest son, his decision is absolute unless some personal disqualification is shown. One of a preferred class entitled to administration may be passed by the register if he is personally incompetent, or is subject to some other disqualification. Insolvency is a disqualification, for the reason that an insolvent might, in his desperation, be driven to use the property of the estate for himself, and public policy provides that he shall not be placed in a position of such peril. But the fact that one is poor, provided he can furnish the security, does not deprive him of his right to administer. *Levan's Appeal*, S. C. Pa., March 22, 1886, Atl. Rep., Vol. 3, 805.

16. HUSBAND AND WIFE.—*Marriage—Presumption —Parent and Child—Illegitimate Children—Recognition — Inheritance — Deed— Delivery—Overcoming Presumption.*—Where a woman, of whom nothing is know, prior to her coming to a certain place, is called Mrs. B. in the community in which she lived, it need not necessarily be assumed that she is a married woman, the wife of a man by the name of B., where no such person is known in the neighborhood; and in law it is not to be presumed that children born to her are the legitimate children of B. Where the father of illegitimate children maintained their mother, and provided for the children, and afterwards took the mother and children into his family, addressed the latter as his sons, and spoke of himself to them as their father, *held*, that the recognition of the children was notorious and general, within the meaning of the Code, § 2466, although the father sometimes denied that they were his children, and had stated that he was physically incapable of being a father. It is not sufficient to overcome the presumption of delivery of a deed in favor of certain of the grantor's children, found in the grantees' possession after the grantor's death, that no person had seen the deed in the grantees' hands prior to their father's death; that it remained unrecorded until after his death; that the grantor remained in possession of the land; that the land was assessed to him, and the taxes paid by him; and that he, subsequently to the date and acknowledgment of the deed, offered the land for sale. *Blair v. Howell*, S. C. Iowa, April 21, 1886, N. W. Rep., Vol. 28, 199.

17. —— ——. *Married Woman — Surety — No Personal Judgment—Mortgage.*—Where a married woman purchases part of certain real estate, paying the vendor therefor in money, all the estate of which she is possessed, the vendor having knowledge of that fact, and her husband at the same time purchases the balance of such real estate, giving notes in payment, signed by the wife as surety, and secured by mortgage on all the real estate, no personal judgment can be rendered against the wife on such notes, nor can the mortgage be foreclosed as against the part of the real estate purchased by her, although the entire estate may have been conveyed directly to her. *Jones v. Ewing*, S. C. Ind., May 13, 1886, N. E. Rep., Vol. 6, 819.

18. —— ——. *Wife's Contracts—Physicians and Surgeons—Malpractice—Evidence.*—The contract of a wife who has been deserted by her husband, for medical assistance, is binding upon her. It is not error to refuse to allow a limb, upon which malpractice is alleged, to be exhibited to a jury after a lapse of several years from date of treatment. *Carstens v. Hanselman*, S. C. Mich., May 12, 1886, N. W. Rep., Vol. 28, 159.

19. INSURANCE.—*Conflict of Laws—Contract of Insurance—Married Woman—Law of New York — Construction of Policy — Right to Paid-up Policy.* — A contract of insurance made and to be performed in a certain State between a corporation and a citizen thereof is governed by the law of that State in an action brought thereon in a Federal court sitting in another State. By the laws of New York in respect to the payment or non-payment of insurance premiums, a married woman stands in the same position as any other person. Where a policy of life insurance declares that, after two annual payments have been made, a failure to pay any subsequent premium shall not avoid the whole insurance, but the insured shall have the right to an insurance for such sum and for such time as the premiums paid would equitably cover, and sets out certain rules for ascertaining the time for which insurance for the full amount should be in force, and gives to the insured as an alternative the right to a paid-up policy for the amount paid, but further provides that if the policy be not surrendered and such paid-up policy be applied for within ninety days after failure to pay a premium, "then this policy shall be void and of no effect;" a default in payment after two annual payments have been made, coupled with a failure to apply either for temporary insurance or for a paid-up policy within ninety days, will work a forfeiture of the policy. *Knapp v. Homoepathic, etc. Co.*, S. C. U. S., April 5, 1886, The Reporter, Vol. 21, 673.

20. LIEN.—*Replevin — Mortgage.*— Where a party having a lien on personalty, delivers the same, he is entitled to resume possession and maintain replevin therefor, where the delivery is procured by fraud or artifice, or is conditional upon immediate payment or security, which is refused, there being no intent to waive or abandon the lien. Where a party having a lien for repairs to a vessel, payment for which is to be secured by mortgage thereon, parts with the possession of the vessel conditionally upon a promise to forthwith prepare and execute such mortgage, on failure to make said mortgage he can maintain replevin for the vessel. *Neafie v. Patterson*, S. C. Pa., April 16, 1886, Pitts. L. J., Vol. 16, 418.

21. MASTER AND SERVANT.—*Infant Servant—Dangerous Occupation — Duty of Master as to Caution, etc.*—The duty devolves upon the master, employing in a dangerous occupation a servant, who, from youth, inexperience, ignorance, or want of general knowledge, may fail to appreciate the danger, to first instruct the servant, and warn him, so that he may comprehend the danger, and do the work safely with proper care on his part; and this, even though the servant consented to be employed in the dangerous situation. *Jones v. Florence, etc. Co.*, S. C. Wis., May 15, 1886, N. W. Rep., Vol. 28, 207.

22. MORTGAGE — *Gratuitous Donee of Incumbered Land—Subsequent Proceedings to Satisfy Debts Rights of Donee—Rights of Action—Law—Equity* A gratuitous donee, who is not in possession, and has accepted the donation of land from a person who bought it on credit, the land still being subject to the judgment under which it was sold, and liable to an execution either on such judgment, or on the bond given for the purchase money, is not entitled to the delay and formalities of the hypothecary action. A gratuitous donee of lands sold since the donation upon execution to satisfy pre-existing debts incumbering it, if aggrieved proceedings, must seek a remedy in equity, and not at law. *Evans v. Pike*, S. C. U. S. May 10, 1886. S. C. Rep. Vol. 6, 1090.

23. ——. *Foreclosure—Sale under Power—Certificate— Title of Purchaser — Description of Land Sold— Several Parcels of land — Action to Set Aside Sale and Redeem—Judgment—Res Adjudicata.*—The title at a sale, upon a foreclosure of a mortgage of real estate under the power of sale, does not pass to the purchaser unless there is a certificate of sale as required by the statute. Where two of the parcels mortgaged were lots 10 and 11, § 15, and the certificate does not state that lots 10 and 11, § 15, were sold, but does state that lots 10 and 11, § 22, were sold, such lots in § 22 not being included in the mortgage, the latter description cannot be construed to mean lots 10 and 11, section 15. The mortgage covered a great many separate parcels, which, at the foreclosure, were sold separately to various persons, and the mortgagor brought an action against the purchasers to have the sale adjudged void, and for leave to redeem from the mortgage, and judgment in that action was rendered for the defendents. *Held*, that this judgment was not *res adjudicata* upon the claim of any purchaser to have acquired the title to any particular lot. *Smith v. Buse*, S. C. Minn. May 26, 1886. N. W. Rep. 28, 220.

24. NEGLIGENCE.—*Master and Servant — Fellow-Servants—Assent of Representative of Master.*— A company owed several workshops, used for the same general purpose. and employed several gangs of men in and about the shops; the plaintiff, a member of a gang employed in taking material in and out of the shops, was injured through the carelessness of a gas fitter in the employment of the company in running a pipe into one of the shops at an improper height; there was evidence that the master mechanic of the company had given his consent to the running of the pipe to the shop, but not that he had directed where or how the pipe should be run. *Held*, the case fell within the rule applicable to cases of injury received through the negligence of fellow-servants, and the plaintiff

could not recover from the company. *Held, further*, that had the master mechanic directed the placing of the pipe where it was placed, the company would have been liable for the consequences of such placing. *N. Y. Lake Erie etc. Co. v. Bell*, S. C. Penn. May 10, 1886. The Rep. Vol. 21, 698.

QUERIES AND ANSWERS.*

[Correspondents are requested to draw up their answers in the form in which we print them, and not in the form of letters to the editor. They are also admonished to make their answers as brief as may be.—Ed.]

QUERIES.

51. A. rides a bicycle on a public road, in the county, at a rapid rate of speed, up to within twenty-five feet of the face of a team of horses traveling towards him, does not turn out, and by this act, frightens the team, and in the fright the harness, which is sound and good, breaks, making it impossible for the driver to control them. A. jumps from his bicycle, seizes the horse next to him, calls to the driver to jump out and seize the other horse. Driver jumps out, but before he can get to the other horse's head, A. lets go his hold, voluntarily, the team runs away, B., riding in the carriage, is thrown out and seriously injured. Has B. a cause of action against A? Cite authorities. Has any correspondent a reference to a case of injury caused by a bicycle? A. L. B.

QUERIES ANSWERED.

Query 29. [22 Cent. L. J. 261.]—DOES THE CHATTEL MORTGAGE FOLLOW THE PROCEEDS.—A. owns a cow and gives to B. a chattel mortgage on the cow; afterwards the cow was killed on the railroad. A. sues the railroad for damages and recovers. Does chattel mortgage follow proceeds? X.

Answer.—Nearly everywhere a mortgage of personal property is not regarded as a mere security, but as passing the legal title, which becomes absolute in the mortgagee upon default. Jones on Chat. Mort., § 1. The mortgagor in possession of the property can sue for an injury to it or, for its conversion, which suit would be a bar to a suit by the mortgagee. Jones on Chat. Mort., § 447. In such case the mortgagor would hold the sum due the mortgagee in trust for him. Green v. Clarke, 12 N. Y. 343; Rindge v. Inhabitants of Coleraine, 11 Gray, 157. S. S. M.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

Although, of course, not binding authorities, the American decisions are very much referred to in our courts, and, in connection with the citation of such decisions much difficulty is experienced in deciding on the relative value, *inter se*, of the judgments of the various Federal and State courts. You would certainly confer a great favor on the Canadian readers of the CENTRAL LAW JOURNAL, if you could publish, in any form you might feel able to spare space for, information on the following points:

1. The distinction between the Federal and State courts, the jurisdiction of each class, and the mode of appointment of the judges.

2. The relative value of the decisions of the Federal and State courts, each as a class, and the relative value of the decisions of the courts of the various States, *inter se* (that is the estimate placed by the profession in general on the relative ability of the bench in such States).

I can readily understand that to answer the latter question might, perhaps, expose you to the charge of making invidious distinctions. At the same time I should think that without much difficulty, and without much danger of creating any feeling, the six or seven courts most entitled to respect might be named.

I, also, of course, quite understand that you may feel that the information asked for, cannot be given, either because of not sufficient general interest to justify its insertion in the JOURNAL, or because of the difficulty of giving the information without too great space being occupied, or because of many other good reasons; and if, therefore, you do not consider it advisable to insert the answers to these queries in the columns of the JOURNAL, I should feel very much obliged if you could refer me to some work from which the desired information may be obtained. **

Toronto, Canada.

It is difficult to answer the above questions so as to do justice to the subject, without taking more space than we could possibly spare. Nevertheless, as it seems to be desired, we will endeavor to furnish our Canadian readers with a brief outline of the judiciary system of the United States and of the several States.

Each State being sovereign, its courts have exclusive jurisdiction of all controversies among its own citizens. This is the general rule. The exception is, that in a controversy between citizens of the same State, if a so-called "Federal question" arises, jurisdiction accrues to the Federal courts. A "Federal question" is one which involves the operation or construction of a provision of the Constitution of the United States, or of a treaty made by that Government with a foreign power, or of an act of Congress. And in all cases in which the plaintiff and defendant are citizens of different States, or one of the parties is an alien, Federal courts have concurrent jurisdiction with State courts, and this is the case whether any "Federal question" is involved or not. And if, in such a case, a suit has been brought in a State court, it may, in its earlier stages, and upon certain conditions, be removed to a Federal court and tried there. On this subject, see Dillon's "Removal of Causes," *passim*.

With this exception the jurisdiction of the State courts is exclusive and exhaustive. Each State has, of course, a system of *nisi prius* courts, criminal courts, probate courts, etc., all subordinate to the court of last resort (in most of the States called the Supreme Court), to which all causes may be carried for review by appeal, writ of error, *certiorari* or other process.

In more than half of the States, judges of all grades are elected by popular vote. In some of them the old system of appointment by the governor, with the consent of the council, or of the legislature is continued; in a few of the States, judicial officers are elected by the legislature. There seems to be no very marked difference between these several modes of selection, so far as concerns the calibre of the judges, or the standing of the courts. In nearly all the States the tenure of judicial office is for a term of six, eight, ten, or twelve years, varying in the several States and according to the grade of the courts. Judges of the higher courts generally hold office for a longer term.

The Federal judiciary is composed of the Supreme Court of the United States, the circuit courts and the district courts. The jurisdiction of the Supreme Court is almost exclusively appellate; the circuit and district courts are "trial courts." From them causes

may be taken to the Supreme Court by appeal or writ of error. In proper cases, a writ of error will also lie from the Supreme Court of the United States to the Supreme Court of a State, or to the highest State court having jurisdiction of the cause. Such a proper case is one in which a Federal question is alleged to be involved.

The jurisdiction of these courts includes all cases in which the United States, as a government, is a party, those in which its officers are officially parties, and those in which the interest of the general government is otherwise involved. It includes also all admiralty cases, and all patent law cases, all revenue cases, all cases in which the litigants (plaintiff and defendant) are citizens of different States; no matter of what character is the cause of action; and all causes, no matter what is the citizenship of the parties, in which the operation or construction of the Constitution of the United States, or of any act of Congress, or of a treaty with a foreign power, may be brought into question.

The judges of the courts of the United States are appointed by the President and confirmed by the Senate, and hold their offices for life, or good behavior.

The decisions of the Supreme Court of the United States upon all Federal questions, are regarded by all courts as conclusive and mandatory; on other questions, as upon questions of commercial or other general law, of which it has acquired jurisdiction by reason of the citizenship of the parties, its rulings are held to be less obligatory; as the decisions of a court of the most eminent character, they are entitled to the utmost respect, but nevertheless are open to controversy.

The decisions of the Supreme Court of each State is of course *the law* to all the inferior courts of that State; the rulings of the Supreme Courts of other States are merely *authority*, in the technical sense of the word; liable to be canvassed and controverted, supported or overthrown, to be followed or disregarded as they may seem to be in accord with right reason and the weight of authority.

Comparisons are proverbially odious, and it would be invidious for us to go into a discussion of the relative merits and demerits of the several State courts of the last resort. We may, however, say without offense, that in the opinion of the profession at large, the Supreme Judicial Court of Massachusetts, and the New York Court of Appeals divide the honors of the first place among the State courts.

We regret that we cannot more fully answer our Canadian friends; the foregoing sketch is necessarily imperfect, but it is the best we can do within the limited space at present at our disposal.—ED. CENT. L. J.

RECENT PUBLICATIONS.

REPORTS. Of the Decisions of the Appellate Courts of the State of Illinois. By James B. Bradwell. Vol. XVII. Containing all the Remaining Opinions of the First, Second, and Fourth Districts up to the Fifth Day of January, 1886, and all the Remaining Opinions of the Third District up to, and Including a portion of those filed December 4, 1885. Chicago: Chicago Legal News Company, 1886.

This is a very handsomely printed and bound volume of the well known series of Illinois Appeal Reports, the value of which, to the profession in its own State especially, seems now to be fully established. There is some doubt in the minds of many members of the bar, whether the decisions of intermediate courts should be reported and published at all, but the fact that so many of them continue to be so published, and to be received with favor seems to resolve all such doubts in their favor. So far as the series now under consideration is concerned, there can be no question.

REPORTS. Of Cases Argued and Determined in the Supreme Court of Judicature of the State of Indiana, With Tables of the Cases Reported and Cases Cited and an Index. By John W. Kern, Official Reporter. Vol. 104, Containing Cases Decided at the November Term, 1885. Indianapolis: The Bowen-Merrill Co. Law Publishers, 1886.

This is the latest issue of the well-known and valuable series of Indiana Reports, bringing the publication of the decisions nearly down to date. The Reporter has manifestly done his duty faithfully, and the execution of the work in respect to its typography, etc. is in every respect unexceptionable.

JETSAM AND FLOTSAM.

"Leather-lunged Scriven," the Irish barrister, was a very ugly man; his complexion was like washleather which had never been washed. Being of high Tory politics, his practice in the Irish law courts frequently brought him in collision with Daniel O'Connell. O'Connell was once retained in a Kerry case, in which the venue or place of trial was laid in in Dublin. O'Connell was instructed to try and change the venue, so that the case might be tried in Tralee. This motion was resisted by Scriven, the counsel opposed to O'Connell. He stated that he had no knowledge of Kerry, and had never been in that part of Ireland. "Oh," replied O'Connell, "we'll be glad to welcome my learned friend, and show him the lovely lakes of Killarney." "Yes," growled Scriven, "I suppose, the bottom of them." "Indeed, no," retorted Dan, "and for this simple reason—your face would frighten the fish."

THE WITNESS.

He calmly takes his place,
And stands with stately grace,
A smile upon his face,
Broad and bland.

I must affirm, he said,
And proudly raised his head;
An oath to me is dead,
On the stand.

The lawyers daze his wits,
Literally give him fits,
And break him all to bits,
In their net.

Questions they shrewdly ply,
Till they make the witness lie,
And he wishes he may die,
You can bet.

He leaves with sullen pace,
With hot and crimson face,
A decidedly hard case,
Made to squirm.

He is surly as a bear,
And to himself right there,
He furiously doth swear,
Not affirm.

—*Montreal Legal News.*

INDEX TO VOL. 22.

Besides the customary abbreviations the following are used in this Index: ann. cas.—annotated cases; dig.—Digest; C. E.—Current Events; R. D.—Notes of Recent Decision.

ABBOTT'S TRIAL BRIEF.
review of, 70.

ACCIDENT POLICY.
suicide, R. D., 436.

ACCORD AND SATISFACTION.
what constitutes accordance and satisfaction, 474.
See Contract, dig., 66.

ACCOUNT STATED.
leading article, by F C. Haddock, 76.
estoppel, usages of business, bank depositors, forgery, vigilance, R. D., 386,

"ACOURT OF THE SUPREME COURT OF THE UNITED STATES," 26.

ACTION.
against railroad company on account of insulting conduct of strangers at station, Batton and wife v. South and North railroad company, annotated case, 467; when remainderman may maintain, dig., 186.

ADJUDICATED CASES ON DEFENCES TO CRIMES.
vol. 4, by John D. Lawson, review of, 479.

ADMINISTRATORS.
See Contempt, dig., 66.
de bonis non, executor. official bond, action, 474.

ADMINISTRATION.
ot the estate of a living person, leading article, by J. M. Vanfleet, 484.

ADULTERATED MILK.
article on that subject, C. E., 193.

ADVICE GRATIS, C. E , 505,552.

ADVICE OF COUNSEL.
See Malicious Prosecution, 332.

AGENCY.
authority of agent, how proved, corporation, evidence telephone, tender, contract, 522.
authority to sell land, contract for payment, rulings on these subjects, 475.
real estate broker, commissions when payable, good faith, when commissions forfeited, dig., 570.
brokers, when entitled to commissions, rule as to name of purchaser, dig., 595.
commission broker sale by, limit of price fixed by consignor, evidence of previous transactions inadmissible, dig. 594.
adopting part of agent's contract, vendee to be satisfied, rulings, dig., 501.
real estate brokers ruling as to their commissions, dig., 214.
agent contracting for one not *sui juris* is personally liable, dig., 161.
See Repudiation, 453.

ALASKA, INDIAN COUNTRY.
United States v. Kie, R. D., 482.

ALIMONY.
equity, when it exercises original jurisdiction over alimony, dig., 308.

AMENDMENT.
See Sheriff dig., 165; Garnishment, dig., 21.

AMERICAN.
bar association report, notice of, C. E. 143.
criminal reports, vol. IV, review, 143.
decisions, vols. 68, 69, 70, review of, 288.
fables, 72.
reports, vol. 52, review of, 335.
reports, vol. 50, review of, 47.
statute law by F. J. Stimson, review of. 479.

ANNOTATED CASES, IN FULL.
action against railroad company by female passenger on account of insulting conduct of strangers at station, Batton and Wife v. South & North Ry. Co., S. C. Ala., 467.
actionable boycotting, Mogul Steamship Co, v. McGregor, English High Court of justice, 303.
appeal, second appeal, effect of *obiter dicta*, railroad land grants, construction, Barney v. Winona, etc. R. Co., S. C. U. S., 495.
benefit associations, who may be beneficiary and how appointed, Supreme Lodge Knights of Honor v. Geo. K. Naim and Frances T. Richardson, S. C. Mich. 274.
benefit society, conditions, burden of proof, excuses for non-payment of assessments, Eaton v. Supreme Lodge, Knights of Honor, U. S. C. C., S. D. Ohio, 560.
bills and notes, conditions which destroy negotiability, Glidden v. Henry, S. C. Ind., 38.
constitutional law, corporation, franchise, New Orleans Water Works Company v. Rivers, S. C, U. S., 442.
contracts between husband and wife, Kniel v. Egleston, S. Jud. Ct. Mass., 133.
conveyance of wife's land, Schley v. Pullman Palace Car Co Same v. Trustees Pullman Land Association, U. S. C. C., N. D. Ill. (see page 308), 230.
corporations, relations with its directors, illegal and void contracts, agreement to pay directors for past services void, Bennett v. St. Louis Car Roofing Co., St. L. Ct. App., 592.
delay of presentment of claims against decedents' estates, N. J. Chan. Ct., 228.
ejectment, competency as a witness of the surviving party to a deed. Chapman v. Dougherty, S. C. Mo., 156.
equity jurisdiction in cases of foreign corporation, Gregory v, New York, etc. R. Co., N. J. Ct. Chan., 110.

ANNOTATED CASES, IN FULL—Continued.

equity, jurisdiction, municipal corporations, mandamus, inadequacy of legal remedy, Thomas v. Allen county, S. C. U. S., 564.

evidence, relevancy, State v. O'Neil, S. C. Ore., 490.

expert evidence, physicians and surgeons, personal injury, contributory negligence after injury, damages, Louisville, etc. Co. v. Falvey, S. C. Ind., 322.

"for value received," Osborne v. Baker, S. C. Minn., 64.

fixtures, trees blown down, *Re* Ainslie, Swinburn v. Ainslie, Eng. Ct. App., 378.

gifts *causa mortis*, Gano v. Fisk, S. C. Ohio, 299.

implied warranty of quality, Wilson v. Lawrence, S. Jud. Ct. Mass., 180.

injunction, injury not remediable at law, Blain v. Brady, Md. Ct. App., 36.

injunction to restrain the pleading of the statute of limitations in an action at law, Lamb v. Bryan, N. J. Ct. Chan., 154.

injury while ordered to "hurry up," Taylor v. Carew Mfg. Co., S. Jud. Ct. Mass., 135.

insurance of mortgage interests, Munson v. Phœnix Ins. Co., S. C. Wis., 250.

inviolability of corporate charters, The New Orleans Gas Light Co. v. The Louisiana Light and Heat Producing and Mfg. Co., S. C. U. S., 204.

jurisdiction of equity over estates of non-resident decedents, Van Gibson's Executor v. Banta, N. J. Ct. Chan., 346.

liability of directors for deceit, Edgington v. Fitzmaurice, Eng. Ct. App., 81.

liability of master for injury to servant, Russell v. Tillotson, S. Jud. Ct. Mass., 446.

libel, words actionable *per se*, Solverson v. Peterson, S. C. Wis., 14.

life insurance, application, agent, when agent of company, and when agent of insured, answers, warranties, fraud, return of premium, Conn. Mut. Life Ins. Co. v. Pyle, S. C. Ohio, 469.

life insurance, void policy, fraud of agent, notice of limitation of powers, New York Life Insurance Co. v. Thomas C. Fletcher, executor Chenonda S. Alford, S. C. U. S., 539.

municipal corporation, power to accept private trusts charitable uses, private cemetery, Holifield v. Robinson, S. C. Ala., 520.

municipal bonds, when they may be legalized, when opinion of state court not followed, Anderson Ex'r. v. Township of Santa Anna, S. C. U. S., 586.

non-liability of stockholder where whole amount of stock is not subscribed, Temple v. Lemon, S. C. Ill., 113.

nuisance, negligence, landlord and tenant, respective liability for injuries caused by unsafe condition of demised premises, Wolf v. Kirkpatrick, N. Y. Ct. of App., 516.

obligations *de bonis propriis* and *de bonis testatoris*, Jenkins v. Wood, S. Jud. Ct. Mass., 61.

prohibition, application by petition to declare election for prohibition void, Miller v. Jones, Jones v. Miller, S. C. Ala., 397.

prohibitory laws, confiscation, compensation, State of Kansas, *ex rel* v. John Walruff, *et al*, U. S. C. C., 277.

relations of railroad companies to express companies, Memphis & L. R. Co. v. Southern Express Co., S. C. U. S., 349.

removal of causes, *habeas corpus*, Kurtz v. Moffit and another, U. S. C. C., of California. 370.

resulting trusts, Harrison Bibb v. Harry Hunter, S. C. Ala., 393.

rights and remedies of remainderman, Walker v. Walker, S. C. N. H., 252.

stockholders, statute of limitations, Glenn v. Semple, S. C. Ala., 182.

trust, equity, jurisdiction, Gilmore v. Tuttle, Chan. Ct. N. J., 423.

libel, evidence, privileged communications, State of Tennessee v. Banner Publishing Co., S. C. Tenn., 418.

validity and interpretation of court rules, Gans Administrator v. Dabergott, N. J. Prerog. Ct., 18.

APPEAL.

second appeal, effect of obiter dicta, railroad land grants, construction, Barney v. Winona etc. Co., annotated case, 495.

presumption from record, measure of damages, dig. 522.

APPEAL—Continued.

record, nunc pro tunc order, evidence, criterion of value of land, rulings, dig., 475.

who may appeal, what trustee may appeal, jurisdiction of appeal, dig., 187.

See Appellate Procedure, dig., 116.

APPELLATE JUDGES SALARIES.

remarks upon, C. E. 123.

APPELLATE PROCEDURE.

restitution, of property sold at execution under a judgment which is subsequently reversed or modified, notes of recent decisions on this subject, 218.

mandate, appeal from judgment in conformity with mandate, dig., 116.

exceptions, manner of saving dig., 66.

APPLICATION.

by petition to declare election for prohibition void, Miller v. Jones, S. C. of Ala., ann. cas., 397.

APPOINTIVE SYSTEM.

remarks upon, C. E., 145.

ARBITRATION.

umpire, award, jurisdiction, rulings on these subjects, dig., 448.

ARBITRATOR.

the commercial arbitrator abroad, remarks upon the growing practice of commercial arbitration, C. E., 3.

ARGUMENTS.

something too much of this, remarks on long arguments, briefs and opinions, C. E., 121.

ARKANSAS JUSTICES.

delusion of, Corr., 119.

AN ARSON ASSOCIATION, 122.

ASSAULT.

definition, pointing an unloaded gun in menacing manner does not constitute, C. E., 123.

ASSIGNMENT.

for creditors, trust, failure of assignee to act, dig., 66.

that is in the nature of maintainance, dig., 214.

See Repudiation, 453; Insurance, dig., 68.

ATTACHMENT.

partner taking firm money to pay his own debt, fraud, ruling, dig., 448.

affidavit, what must be stated in it, dig., 595.

See Jurisdiction, dig., 69.

ATTORNEY.

and client privileged communications, dig., 66.

disbarred for procuring fraudulent judgment. 546.

unprofessional conduct rulings on that subject, dig., 308.

when held as trustee, dig., 284.

AWARD.

See Arbitration, 448.

BAGGALY.

Mr. Justice and Lord Justice Topes, retirement of the former, the latter succeeds him, 2.

BAILEY, James E.

notice of his death, C. E., 192.

BAILMENT.

conversion, agent, rulings upon, 475.

feigned issue to try title to property, rulings on the subject, dig., 355.

tailors not liable for customers cloths, 570.

BANKER AND AUCTIONEER CUSTOMER.

article upon, 58.

BANKRUPTCY.

See Judgment, 450.

BANKS.

and banking, evidence, usage, rulings upon, dig., 137.

payment to committee of lunatic, statutes of limitations, specific fund, demand, rulings, dig., 426.

BANTZ, GIDEON D.

author of note on State of Tennessee v. Banner Publishing Co., 422.

author of note on Glen v. Semple, 185.

author of note on Gregory v. New York etc. R. Co. 114.

author of leading article on remedy by execution, fraudulent conveyances, 124.

BAR DINNER.
canadian bar dinner, C. E.,242.
BAR ASSOCIATION.
of Kansas, notice of, C. E.,362.
of South Carolina, remarks upon, C. E.,121.
and their organ, remarks upon, C. E., 145.
BASTARDY.
ruling as to whether proceeding is civil or criminal, dig., 237.
BEACH ON CONTRIBUTORY NEGLIGENCE.
review of, 166.
BENEFICIAL ASSOCIATION.
construction of by-laws, ruling on that subject, 284.
who may be beneficiary and how appointed, ann. cas. Knights of Honor v. Naim, 274.
conditions, burden of proof, excuses for non-payment of assessments. Eaton v. Supreme Lodge Knights of Honor, ann. cas., 560.
BILLS AND NOTES.
conditions which destroy negotiability. Glidden v. Henry, S, C. Ind.,May 26, 1885, ann. cas. 38.
BILLS OF EXCHANGE.
rulings on commercial law, acceptance by executor. dig., 402.
BILLS OF LADING.
See Carriers, dig., 66.
BLACK, H. CAMPBELL.
author of note on Osborne v. Baker, 65.
author of leading article on real estate brokers, their right to commission, 126.
author of article on Walker v. Walker, 255.
author of note upon the New Orleans Gas Light Company v. The Louisiana Light and Heat Producing Company, 213.
author of note on New Orleans Water Works Co. v. Rivers, 445.
author of note on Hollifield v. Robinson, 521.
author of article on rules of practice on the taking of depositions, 581.
BLATHERSKITE.
Sam Jones the revivalist, his improper language referring to Missouri officials, C. E.,3.
BONA FIDE HOLDER OF NEGOTIABLE PAPER.
what is bad faith, leading article by Wm. M. Rockell, 437.
BONA FIDE PURCHASER.
not affected by prior fraudulent conveyance, dig., 285.
BOND.
consideration and execution of, ruling on that subject. dig., 256.
BOUNDARIES.
of land, parol evidence, monuments, rulings on that subject, dig., 570.
BOYCOTTING.
action of Mogul Steamship Co, v. McGregor, ann. cas. 303.
BRIEF MAKER.
office of assistant, C. E , 193.
BURGLARY.
larceny. See Criminal Law, dig.. 427.
BURKE, JOHN F.
author of leading article on proof required of proponent beneficiary, or writer of will. 172.
CANINE INHERITANCE, 72.
CAPTURED AND ABANDONED PROPERTY.
action against secretary of treasury for conversion of under R. S. U. S., 1059, fact of taking under claim made in good faith is a bar, R. D., 243.
CARRIERS.
Of Goods.
common carrier, negligence, railway company transdorting a circus not a common carrier and may stipulate against liability for negligence of its servants, R. D., 147.
charter party, bill of lading, dig., 66.
Of Passengers..
negligence, passenger boarding train after signal for starting, 546.
CAR TRUST SECURITIES.
article upon, 289.
review of, 143.
CASE LAW AGAIN.
Audi Alteram Partem, article upon, 577.
CHAMPERTY.
See Maintenance, dig., 117.
CHARTER.
See Corporation, dig., 161.
party, penalty, liquidated damages, ruling upon, dig., 139.
party. See Carriers, dig., 66.
CHATTELS.
retention of possession by donor, article from exchange, 57.
CHATTEL MORTGAGE.
See Mortgage, 525.
description of property, when sufficient, costs, appeal judgment, 522.
See Covenant, 355.
CIVIL PROCEDURE.
variance, ruling upon, dig., 139.
CLEVELAND DAILY COURT RECORD.
notice of, 169.
CODE OF EVIDENCE.
review of, by C. D. Baker, 143.
CODES.
changes in, article on Virginia proposed revision, 361.
CODIFICATION.
note of as illustrated in the case of Cornelison, C. E., 51.
COLORED LAWYERS IN CHICAGO.
remarks upon, 121.
COMMON CARRIER.
commutation, discrimination, 522.
ruling as to duty of railroad as to commutation tickets, dig., 355.
COMPROMISE.
See Evidence, dig., 162.
CONFEDERATE NOTES.
See Contracts, dig.,187.
CONFLICT OF LAWS.
divorce in other States, jurisdiction, rulings, dig., 427.
CONSPIRACY.
acts and declarations, evidence, rulings on these subjects, dig., 380.
CONSTITUTIONAL AMENDMENT.
proposed, touching the Supreme Court of Kansas, remarks upon, C. E., 122.
CONSTITUTIONAL LAW.
annotated case on,204.
commerce, tax on liquor dealers of other States, R. D., 289.
corporation, franchise, The New Orleans Water Works Company v. Rivers, ann. cas., 442.
criminal law, prosecution by information, rulings on these subjects, dig., 331.
fourteenth amendment, limitations on city's power to license trades, dig., 570.
inter-State travel, taxation, R. D., 385.
library tax fee (in Alabama), constitutional, dig., 595.
laws embracing more than one subject, ruling, dig., 449.
militia, right to bear arms, R. D., 411.
official acts, dig., 66.
ruling upon, dig., 187.
prohibition, construction of a statute, rule for, dig., 330.
police power, quarantine laws of a State, regulation of commerce, tonnage tax, 595.
right of appeal, ruling on, dig., 285.
CONTEMPT OF CO
leading article, by E, S. Whittemore, 464.
executors, administrators, ordered to pay, dig., 66.
inherent power of courts to punish, what it is, ruling, dig., 449.
strike, article upon, C. E.,469.
CONTRACT.
accord and satisfaction taking note of third party for less amount, dig., 67.
ambiguity, construction, rulings on these subjects, dig., 402.
between husband and wife, Kniel v. Egleston, S. Jud. Ct. of Mass., Oct. 24, 1885, ann. cas., 133.

CONTRACT—Continued.
building contract, waiver by owner of architect's certificate, ruling, dig., 449.
builder's contract, acceptance, waiver, lumber contract, refuse lumber, dig., 475.
consideration, agreement to cease annoyance, a good consideration, R. D., 6.
contractor, when entitled to compensation though building destroyed by fire, dig., 285.
corporation, bid in answer to advertisement is not a contract, dig., 570.
discharged in confederate notes, discharge when not invalid, dig., 187.
fraud, false representations made in ignorance, rulings on this subject, dig., 401.
in restraint of trade, ruling upon, dig., 187.
obligation of, See Constitutional Law, dig., 237.
prompt shipment, delay, counterclaim, rulings on these subjects, dig., 355.
partnership, damages, dig., 523.
penalty, liquidated damages, rulings upon, dig., 117.
See Master and Servant, 188.
several writings, one transaction, construction, dig., 498.
when a guaranty remains a mere proposition and not a contract, dig., 238.
written contract, previous negotiation merges into, rulings, dig., 427.

CONVEYANCE.
of wife's land. Schley v. Pullman Palace Car Co.; Same v. Trustee Pullman Land Association, Cir. Ct., N. D. Ill., ann. cas., 230.

CONVERSION.
See Bailment, 475.

CORONER.
See Evidence, dig., 93.

CORPORATIONS.
actions against, defense by stockholder, when not allowed, dig., 117.
Agent.
whether company liable for physician's fees for attending persons injured on train, dig., 546.
Charter.
legislative recognition equivalent to new charter, dig., 161.
Directors, Trustees.
in what sense the directors of a corporation are the trustees for its creditors, R. D., 194.
giving the ballot to, in Montreal, remarks upon, C. E., 122.
Insolvency.
rulings upon, 427.
liability of promoters, promoters of inchoate or abortive corporation liable individually on their contracts, R. D., 98.
liability of, for its officers, dig., 523.
Municipal.
liable upon *quantum valeat* for water furnished, damages, evidence, 546.
icy sidewalk, contributory negligence, notice, dig., 524.
right of merchant to obstruct sidewalk, dig., 524.
liability for defective sidewalk, pleading, streets, rulings, dig., 523.
mutual benefit association, who is "a person incapable of working," dig., 523.
powers, mortgage, negligence, damages, dig., 475.
relations with its directors, illegal and void contract, agreement to pay director for past services void. Bennett v. St. Louis Car Roofing Co., ann. cas., 392.
Religious.
trustee, compensation of, evidence, custom, admission of trustee, dig., 475.
powers of officers, security for loans, ruling on that subject, dig., 257.
Township.
subscription of stock to railroad company, dig., 523.

CORRECTION.
of error in annotation by Mr. Kerr, 308.

CORRESPONDENCE, 22, 43, 95-119, 141, 191, 216, 240, 262, 310, 383, 406, 455, 503, 527, 552, 574, 599.
a correction, Mr. M. S. Robinson, of Chicago, 310.
bar associations and their organ, communication upon, 119.
injunction and the right of trial by jury, communication upon this subject, 191.
inter-State garnishment and exemption laws, communication upon, 95.

CORRESPONDENCE—Continued.
inter-State attachments, 262.
inter-State garnishment and exemption laws, danger of amateur conveyance and mechanic's liens in Nebraska, 383.
inter-State garnishment, 527.
more advice gratis, 574.
unreported cases, wants to publish one, 216.
wants to write for us, and answer to his proposition, 413.
addendum to thanksgiving offering, letter on that subject, 43.
advice gratis, correspondent commends remarks on the citation of authorities, the proper way to cite case by name, volume and page, 575.
ancient ways, a correspondent who is willing to stand on the ancient ways, 240.
American cases cited in Canadian courts, questions propounded as to jurisdiction of American courts and relative value of American authorities, editorial answer to those questions, 599.
Arkansas code, construction asked of Arkansas law of vendor's lien, the question answered, 575.
Arkansas justice, delusion of on the subjects of attachments and visible property, 118.
authorities, proper mode of citing by name of case, volume and page, 505.
bar associations and their organ, letter on that subject by Francis Rawle, 118.
code, civil code of Georgia, letter correcting an error on that subject contained in a previous number of this journal, 44.
correction, charge against Mr. M. S. Robinson retracted by correspondent, 310.
danger of amateur conveyancing, case mentioned by correspondent in which a will drawn by an illiterate man produced half a dozen lawsuits, 383.
garnishment, exemption, a correspondent insists that a garnishee is not bound to claim exemption for the debtor, that the exemption is a personal privilege of which the debtor may or may not take advantage at his option. He admits that various courts have ruled otherwise, 141.
good juries in Illinois, letter controverting alleged partiality and prejudice in Illinoi juries, 44.
Hendricks, Thomas A., letter on the subject of previous editorial comment upon Mr. Hendricks' character as a lawyer, 118.
injunction and trial by jury, a correspondent insists that the jurisdiction of courts of equity is being improperly extended by judicial construction so as to impair the constitutional right of trial by jury, 191.
inter-State garnishment and foreign exemption laws, a correspondent complains that exemption laws are evaded by garnishment proceedings in States in which the debtor does not reside, 141.
inter-State garnishment, correspondent states that in Iowa exempt property may be protected by injunction citing case, 527.
interest, correspondent asks whether interest is to be computed on days of grace, another answers that interest runs for those days, and cites case in which the question was jurisdictional, 406.
inter-State garnishment, correspondent states the law of Tennessee on the subject, and suggests that its adoption would be the best solution of the question, fictitious transfers a fraud on the jurisdiction of the court, 262.
inter-State garnishment, correspondent calls attention to the practice of evading exemption laws by fictitious and collusive assignments of judgments to parties out of the State, 43.
inter-State garnishment, foreign exemption laws, several correspondents discuss this subject, and cite authorities in favor of their views, 216.
inter-State garnishment, how a debtor in Missouri may prevent the fraudulent evasion of foreign exemption laws, letter showing how it can be done, 44.
inter-State garnishment, Judge Burgess' remedy, debtor recovering back the money from his creditor in an action, letter on the subject showing how to do it, 44.
inter-State garnishment, mode practiced in Iowa of evading exemption laws by fictitious and collusive assignments, 95.
inter-State garnishment, exemption laws, question raised whether exemption is a personal privilege, answer that it is the duty of the garnishee to set up debtor's privilege, citing cases in support of the doctrine, 38

CORRESPONDENCE—Continued.
mechanic's lien law in Nebraska, correspondent gives what he states is the law of that State on the subject, citing authorities, 383.
modest correspondent who is not going to tell us how to play editor, 240.
oleomargarine, a correspondent discusses the oleomargarine question from a constitutional standpoint, citing many authorities, 141.
promotion, deserved, letter of thanks from gentleman promoted from colonel to general, both titular, 23.
stockholders, non-resident, letter on the subject of enforcing the liability of non-resident stockholders of corporations, 43.
tables of cases, correspondent thinks that tables of cases in law books are useless, and that they should be omitted, 455.
tables of cases, correspondent protests against the proposition that tables of cases should be omitted in law books, 503.
thanksgiving offering, addenda, correspondent says: "Keep on just as you are, and pay no attention to growlers," 240.
touters and shysters in St. Louis, letter and editorial comments on this subject, 22.
wants to write for us, letter making such a proposal and answer to it, 43.

COPYRIGHT.
article upon, C. E., 553.
its law and its literature, by R. R. Bowker, review of, 575.

COVENANT.
warranting title to personal property, chattel mortgage, eviction, rulings on these subjects, dig., 355.

COUNTER-CLAIM.
See Set-Off, 526.

COURTS.
See Powers of Courts, 453.

COURT JOURNAL.
notice of, 49.

COURT RULES.
validity and interpretation, rule requiring notice of application for letters of administration, Gans v. Dabergott, N. J. Pre.Ct., ann. cas., 18.

CREDIT.
letters of credit, ruling upon effect of general and of special letters of credit, dig., 215.

CREDITOR'S BILL.
when it lies before exhausting remedy at law, dig., 238.

CRIMINAL EVIDENCE.
rulings upon, dig., 427.

CRIMINAL LAW.
arson, may be established by circumstantial evidence, 571.
burglary, larceny, murder, forgery, rulings on these offenses, dig., 427.
conspiracy, what evidence admissible against co-conspirators, dig., 257.
conviction of inferior grade of offense, 67.
cruelty to animals, ruling on that subject, 596.
evidence, dying declarations, dig., 257.
dying declarations, malice, provocation, misconduct of counsel, dig., 570.
embezzlement by municipal officer, ruling, 596.
false pretenses, indictment, proof, letters between two defendants, evidence, dig., 596.
false pretenses, worthless check, second conviction, criminal procedure, 476.
grand larceny, presumption as to stolen property, dig., 426.
indictment of ticket agent, dig., 257.
indictment, evidence, rulings on these subjects, dig., 381.
indictment, distinction between a purpose to commit a crime and attempting to commit a crime, R. D., 27.
information, amendment of, arraignment, rulings on, dig., 448.
larceny, burden of proof, recent possession of stolen goods, *alibi*, witness, credibility, 596.
larceny, evidence of ownership, presumptions from established facts, rulings, dig., 448.
larceny, receiving stolen goods, what must be proved, 570.
murder, self-defense, rulings on these subjects, dig., 356.
murder, homicide, rulings on these subjects, dig., 403.
municipal ordinance, effect of its repeal, 524.

CRIMINAL LAW—Continued.
new trial, remarks by court, effect of, new trial granted, 524.
once in jeopardy, rulings on seduction, 524.
order granting change of venue improvidently made may be set aside, other rulings, 546.
recognizance, indictment, discharge of bail, rulings on these subjects, dig., 334.
rule as to testimony of defendant, various rulings, 524.
self-criminating evidence, rebutting evidence, 571.
what is a conviction, ruling, dig., 449.
See Conspiracy, 380; Powers of Trial Courts, etc., 453.

CRIMINAL LAW MAGAZINE.
notice of its improvement, 25.

CRIMINAL PRACTICE.
witness, examination, repetition of question, juror, competency of, sickness of juror, dig., 476.

CRIMINAL PROCEDURE,
jury, judges of law, charge of court, murder, presumption in favor of lesser offense, rulings, dig., 449.
trial without plea of not guilty, dig., 21.

CROSWELL, SIMON G.
author of note on Blain v. Brady, 37.

CURIOUS LAW.
how an oil speculator was convicted of a serious crime, 192.

CURRENT EVENTS, 1, 25, 49, 73, 97, 121, 145, 169, 193, 217, 241, 265, 289, 313, 337, 361, 385, 409, 433, 457, 481, 505, 529, 553, 577.
a "Court of the Supreme Court of the United States," 26.
adulterated milk, 193.
advice gratis, 505.
appellate judges, salaries of, 123.
appointment of U. S. circuit judge, 409.
appointive system, results of, 145.
arson association, 122.
Baggally, Mr. Justice, Lord Justice Lopes, 2.
ballot, giving it to corporations, 122.
bar association, and its organ, 145.
Baxter, Judge, death of, 385.
Bishop pleading for abolition of oaths, 169.
blatherskite, 3.
Canadian bar dinner, 242.
car trust securities, 289.
case law again, *audi alteram partem*, See 529, 577.
changes in codes, 361.
Cleveland Daily Law Record, 169.
colored lawyers in Chicago, 121.
commercial arbitrator abroad, 3.
constitutional amendment, Kansas, 122,
contempt of court, strikes, 409.
controlling decisions by a minority of judges, 49.
copyright, 553.
Court Journal, The, 49.
Criminal Law Magazine, 25.
dissenting opinions, 313.
English socialist orators, 265.
exemption laws and chattel mortgages, 577.
extradition, 553.
good scheme, 170.
grace of brevity, 385.
Hendricks, Thomas A., as a lawyer. 1.
how judges disagree, 169.
how to lose subscribers. 169.
inter-State marriage laws, 337.
judges in an unusual role, 193.
judicial nepotism, 218.
judicial re-organization, 433.
judicial service, forty-one years of it, 26.
Kansas Bar Association, 26, 121, 362.
law-book making, run into the ground, 145.
lawyers' fees and farmer juries, 410.
lawyers in the English government, 217.
libel, 363.
libelling a wife, 481.
Littleton Law Library, 337.
Lord Chancellor of England, 242.
Manitoba Law Journal, discontinued, 25.
marriage licenses, 265.
New York City Bar Association, 25.
"Nonsense of Reason" 217.

CURRENT EVENTS—Continued.
not without honor save in his own country, 169.
office of assistant brief maker, 193.
Ohio Bar Association, 49.
origin and utility of case law, 529.
passengers, baggage, 505.
Pennsylvania County Court Reports, 2.
poachers on professional preserves, 313.
presidential succession law, 97, 458.
private corporations, 361.
railroad and express companies, 337.
railway negligence, locomotive and dog, 97.
removal of territorial judges, 73, 74.
reporters and publishers, 241.
shortest and slowest, 3.
sinking fund, law of, 121.
something too much of this, 73, 121.
South Carolina Bar Association, 121.
suppressing publications of judicial decisions, 25.
supreme lodge that is not supreme, 97.
tables of cases, 482.
telephone testimony, 433.
ticket of leave system, 145.
true lawyer, ethics of advocacy, 457.
twice in jeopardy, 409.
uniform code of procedure, 529.
Waite, Chief Justice, in England, 49.
Washington at the bar, 242.
Woods Railway Law, 97.

CUSTOMS.
duties, requisites of action to recover back, dig., 257

DALY.
chief justice, retirement of, after forty-one years of service, 26.

DAMAGES.
measure of, failure of title, fraud, 547.
liquidated, See Charter party, dig., 139.

DEATH.
of Judge Baxter, notice of, 385.
of party, dig., 20.

DECEIT.
ann. cas., Edington v. Fitzmaurice, 81.

DECISIONS.
controlling by a minority of judges, remarks upon, 49.

DECLARATION.
of pain and suffering, leading article by W. H. Russell, 509.

DEED.
acknowledgment by married woman, claiming to be single, estoppel, ruling, dig., 449.
construction, latent, ambiguity, evidence, rulings on these subjects, dig., 403.
lands bounding on alley, title, trespass, ruling, dig., 449.
reservation of easement, effect of, words of inheritance, dig., 92.
stipulations, conditions, injunction, verbal contract, heir, evidence, parol agreement, 498.
Unrecorded.
purchase with notice, discharge in bankrupcy, 476.
reformation of, See Equity, dig., 450,

DELAY.
in presentment of claims, against decedents estates, Lewis v. Champion, New Jersey, chancery court, May term, ann. cas., 228.

DEPOSITIONS.
See Evidence, dig., 93.

DEVISE.
See Municipal Corporations, dig., 239.

DIARY NOTES FOR 1886.
Jetsam and Flotsam, by J. W. Donovan, 24.

DISSENTING OPINIONS.
article upon, C. E., 313.

DIVORCE.
a mensa et thoro, cruel treatment and vicious conduct, R. D., Hawkins v. Hawkins, 532.
Alimony.
equity, pleading, rulings on these subjects, dig., 403.
See husband and wife, 548.

DOMICIL.
acts and declarations, evidence of intention, dig., 309.

DOWER.
bankruptcy, mortgage, merger, sale by assignee and by sheriff, equity of wife, rulings, dig., 449.

EASEMENT.
ancient light, after acquired adjacent property, prescription, dig., 546.
building beyond line, adverse possession, right to lateral support of soil, right to excavate, rulings, dig., 449.
highway, streets of a city, ruling as to erecting telephone poles, dig., 258.
right of way, foundation of the right, estoppel, dig., 571.
right of way, *quare clausum fregit* dig., 499.
streets, dedication, intent to dedicate, acceptance, rulings on these subjects, dig., 356.
trespass, action will lie for injury to alley held in common, rulings on this subject, dig., 381.
See Deed, dig., 92.

EJECTMENT.
competency as a witness of the surviving party to a deed, Chapman v. Dougherty, S. C. Mo. ann. cas., 156.
recent ruling on Missouri statutes of limitations, dig. 596.
transfer of lands to trustee, who cannot maintain ejectment, dig., 161.

ELECTION OF REMEDIES.
part I, 533; part II, leading articles by W. W. Thornton, 556.

ELLIOTT CHARLES BURKE,
author of leading article on, "Purchasing Mortgaged Real Estate," 464.

ELLIOTT, W. F.
author of, note on Anderson v. Township of Santa Anna, 596.
author of article on intent, 271.
author of note on Jenkins v. Wood, 61.

EMINENT DOMAIN.
assessment of damages for taking water rights, rulings on these subjects, dig., 356.
removal of buildings, dig., 93.
ruling upon, dig., 571, 404.
value of land taken, compensation to land owners how estimated, dig., 597.
watercourse, act to be strictly followed, rulings, dig., 450.

ENFORCEMENT OF CRIMINAL LAW, 71.

ENGLISH SOCIALIST ORATORS,
notice of, C. E., 265.

EQUITY.
cancellation of written instruments, fraudulent misrepresentation, dig., 403.
Cancellation.
cancellation of forged instruments, notes of recent decisions on this subject, 219.
jurisdiction in case of foreign corporations, Gregory v. New York etc. R. Co., N. J. C. Ch., 110.
Jurisdiction.
municipal corporations, mandamus, inadequacy of legal remedy, Thompson v. Allen county, ann. cas., 564.
specific performance, when vendee cannot maintain bill for, estoppel, when equity will not relieve, dig., 476.
has no jurisdiction to levy and collect taxes, dig., 238.
Practice.
facts found by special master conclusive, subsequent damages, dig., 439.
reformation of deed, partition, tenants in common, mutual, mistake, rulings, dig., 450.
relief in, against a patent, dig., 118.
specific performance, defect in title, cloud on title, jurisdiction, remedy at law, action to remove cloud on title, 547.
suit to quiet title, defence, powers, will power of executor, dig., 597.
specific performance, ruling on, 356.
of wife, See Dower, 449; See Alimony 308; See Creditor's Bill, 238; See Specific Performance, 141; See Trust, 526; See Will, dig., 42.

ERROR.
without prejudice, no ground for reversal, dig., 20.
ESTATES OF DECEASED PERSONS.
validity of agreement to pay claim not presented for allowance, dig., 239.
ESTOPPEL.
in pais, failure to disclose interest in land sold, married woman, rulings, dig., 450.
Judgment.
damages, costs, rulings, 597.
pleading evidence, dig., 571.
See Deed, 449.
EVERY MAN'S HOUSE HIS CASTLE.
communication, 32.
EVERY PRISONER HIS OWN WITNESS.
note of decisions on the subjebt of defendants in criminal cases appearing as witnesses, 314.
EVIDENCE.
admission in pleadings. effect of, dig., 93.
admission made pending negotiation for settlement, rule as to competency of such admissions as evidence, dig., 499.
compromise, what is not admissible, dig., 162.
deceased witness, bill of exceptions, dig., 162.
foreign record, authentication, dig., 239.
Hearsay.
pedigree, proof of, ancient deed, when admissible, dig., 427.
previous statements of witness, ruling on these points, dig., 403.
impeaching one's own witness, what party may show, dig., 499.
of intent. Article by W. F. Elliott, 271.
lost papers, ruling on that subject, dig., 309.
practice, newly-discovered evidence, 597.
Parol.
collateral agreement, mechanics' liens, 524.
public record, may be proved by sworn copy, dig., 67.
relevancy. State v. O'Niel, ann. cas., 490.
witness, leading question, rulings on this subject, dig., 356.
to vary written agreement, promissory note, want of consideration, champerty, judicial notice, jurisdiction, acts regulating execution of laws, rulings on these points, 499.
See Banks, dig., 137; Criminal Law, 448, 596; Practice, 259.
EXCEPTIONS.
See Appellate Procedure, dig., 66.
EXECUTION.
exemption, pleading, partnership, drawing out funds, parties to action, husband and wife, wife's rights, 548.
EXECUTION.
review of cases upon, when void, breaking doors, rights and liability of sheriff, R. D., 315.
EXECUTORS AND ADMINISTRATORS.
agreement among heirs for distribution, validity, probate of will, laches, 525.
ann. cas., Jenkins v. Wood, S. J. Ct. Mass., 61.
discretion of court as to who shall be appointed administrator, rulings on that subject, 597.
powers of, to submit matters to arbitration, Rogers v. Hand, S. C. W. Va., R. D., 50.
See Contempt, 66; Official Bond, 452.
EXEMPTION LAWS AND FOREIGN GARNISHMENT.
communication upon, 141.
EXEMPTION.
how a debtor in Missouri may prevent the fraudulent use of foreign exemption laws, cor., 44.
EXEMPTION LAW AND CHATTEL MORTGAGES.
article upon, 577.
EXPERT EVIDENCE.
Louisville R. Co. v. Falvey, ann. cas., 322.
EXTRADITION.
article upon, R. D., 553.
FEDERAL DECISIONS.
vol. 11, edited by W. G. Meyers, review of, 383.
vol. 13, edited by Wm. G. Myers, review of, 503.
FEDERAL LEGISLATION AGAINST LOTTERIES, 96.
FENCE LAW.
leading article upon, by Crosby Johnson, 196.
FIXTURES.
innocent purchaser, furnace attached to house, ruling upon, 571.
ruling upon this subject, dig., 404.
trees blown down, *Re* Ainslie; Swinburn v. Ainslie, ann. cas., 378.
FORCIBLE ENTRY AND DETAINER.
leading article by Samuel Maxwell, 292.
FOREIGN CORPORATIONS.
enforcement of liability of resident stockholders, corresp., 43.
FOREIGN EXEMPTION LAWS AND GARNISHMENT.
communication upon, 216.
FORMS IN CONVEYANCING.
by L. A. Jones, review of, 455.
FORTY-ONE YEARS OF JUDICIAL SERVICE.
retirement of Judge Daly, 26.
FRAUD.
creditors, 548.
negligence, ruling that negligent party must bear loss, dig., 187.
when a question for the jury, 428.
statute of, obligation of vendee if signed also by vendor satisfies the statute, 548.
statute of, promise to answer for debt of another, rulings on that subject, dig., 286.
fraudulent assignment, rulings on this subject, 357.
See Attachment, 448; Limitations of, 239; Judgment, 258.
FRAUDULENT CONVEYANCE.
preference, new trial, newly discovered evidence, rulings, dig., 450.
See Garnishment, 381.
FRENCH LAW OF MARRIAGE.
review of, 311.
GARNISHMENT.
of mortgagee, fraudulent conveyance, rulings on these subjects, dig., 381.
whether bound to claim exemption for debtor, communication upon, 141.
amendment, misnomer, dig., 21.
GEORGIA.
civil code of, 44.
GIFTS CAUSA MORTIS, 96.
Gano v. Fisk, ann. cas., 299.
GIFT.
See Vested Interests, dig., 42.
GRACE OF BREVITY.
a word to our readers, C. E., 385.
GUARANTY.
See Negotiable paper, dig., 42; Contract, 238.
GUARDIAN AND WARD.
sale of ward's land, rulings on this subjects, dig., 331.
HABEAS CORPUS.
appeal, writ of error does not operate as *supersedeas*, R. D., 51.
extradition, for what extradited person may be tried, dig., 285.
HADDOCK, FRANK C.
author of article of Account Stated, 76.
author of note on Batton and Wife v. South and North Railroad Company, 467.
author of note on Kurtz v. Moffitt, ann. cas., 375.
HAMILTON, ADELBERT.
author of leading article on release of property held as surety, 414.
HANDWRITING.
as evidence of identity, leading article, 316.
HARD SENSE IN SPEECHES, 216.
HAWLEY, T. D.
author of note of Wolf v. Kirkpatrick, 517.
HEARINGS IN CAMERA, 168.
HENDRICKS, THOMAS A.
late vice-president as a lawyer, remarks upon his professional character, 1.
communication concerning, 119.
HIGHWAY.
dedication, acceptance, what is sufficient evidence of either, 428.
See Negligence, dig., 164.
HOPKINS, M. W.
author of article on Tender, 389.

HOSPITAL.
for poor barristers to learn practice in, 168.
HUSBAND AND WIFE.
conveyance by wife in fraud of her husband's marital rights, notes on this subject, R. D.,365.
divorce, *res adjudicata*, decision in separate maintenance suit, dig., 548.
loans between, no remedy at law or in equity, loan of wife's separate property, remedy, dig., 548.
marriage, presumption of, rulings, dig., 597.
married woman, surety, no personal judgment, dig., 598.
right of wife to real estate, when it attaches, dig., 571.
trust deed, husband as agent of wife, dig., 476.
warranty deed, estoppel, inchoate interest, dig., 571,
wife's contracts, malpractice, evidence, dig., 598.
wife's separate estate, liability for husband's debts, dig., 548.
ICONOCLASM AND WHITEWASH.
by Irving Browne, review of, 430.
ILLINOIS APPEAL REPORTS.
vol. 17, by James B. Bradwell, review of, 600.
ILLINOIS.
good juries in, communication, 44.
IMPLIED WARRANTY.
of quality, Wilson v. Lawrence, S. Jud. Ct. of Mass., ann. cas., 180.
IMPRISONMENT FOR DEBT, C. E., 96.
INDECENT ASSAULT.
produced by obscene publications, 47.
INDEMNITY.
when indemnitor bound by judgment, dig., 358.
INDEX.
monthly index of the West Publishing Company, a good scheme, 170.
INFORMATION.
See Criminal Law, 448.
INDIANA REPORTS.
vol. 104, review of, 600.
INDICTMENT.
criminal law, difference between attempt to commit a crime and a purpose to commit it, R. D., 27.
INJUNCTION.
injury not remediable at law, Blain v. Brady, Maryland Ct. App., ann. cas., 36.
irreparable injury, R. D., 50.
judgment, jurisdiction, appeal, costs, dig., 547.
to restrain the pleading of the statute of limitations in an action at law, Lamb v. Ryan, N. J. Ct. of Ch., ann. cas., 154.
not served, effect of, pending negotiations of parties, forfeiture, lease, fixtures, 477.
statute of limitations, Lamb v. Ryan, ann. cas., 154.
INJURY.
to servant while ordered to hurry up, Taylor v. Carew Manufacturing Company, S. Jud. Ct. Mass., ann. cas. 135.
INNKEEPER'S SERVANTS.
article on law of, 343.
INNKEEPER.
apartment hotels, proprietor not liable as innkeeper, 548.
INSANITY.
defence of, See Criminal Law, 403.
presumptions of, ruling on this subject, dig., 381.
See Life Insurance, 451.
INSURANCE.
See Life Insurance, 331.
fire, animals, ruling upon, dig., 117.
Fire Insurance.
assignment of claim for loss occasioned by carelessness of railroad company, 525.
cancellation of policy, ruling upon, notice of loss, 67, 68.
conflict of laws, contract of insurance, married woman, construction of policy, right to paid-up policy, 598.
policy, renewal, rulings, dig., 428.
when farm buildings are deemed occupied, dig., 102.
forfeiture clause, evidence, rulings, 428.
Life Insurance.
assignment of policy, mortgage, fraudulent transfer,
INSURANCE—Continued.
covenant, limitations, warranty, representation, laches, dig., 477.
failure to pay premium, etc., rulings upon, dig., 404.
insurable interest, assignment of interest by heirs, dig., 572.
policy on life of a man taken by person who designs to kill him, 499.
keeping hazardous articles, rulings on these subjects, dig.. 357.
of mortgage interests, Manson v. Phœnix Ins. Co., S. C. Wis., ann. cas., 250.
re-insurance, ruling on that subject, dig., 258.
re-insurance upon, dig., 548.
when policy takes effect, 572.
INSTRUCTIONS.
See Trial, dig., 42.
INTEREST.
date of commencement on partnership loss paid by one partner, 450.
INTERNAL REVENUE.
municipal corporation, liability for acts *ultra vires*, Salt Lake City v. Hollister, R. D., 579.
INTER-STATE GARNISHMENT.
exemption laws, communication upon, corresp., 43.
INTER-STATE MARRIAGE LAW, C. E., 337.
INTOXICATING LIQUORS.
license, ruling on these subjects, dig., 381.
INVIOLABILITY.
of corporate charters, The New Orleans Gas Light Co. v. The Louisiana Light and Heat Producing Co., S. C. U. S., ann. cas., 204.
JACKSON, H. E.
appointment to succeed Judge Baxter, 409.
JETSAM AND FLOTSAM, 24, 47, 70, 96, 120, 144, 167, 191, 216, 240, 288, 311, 336, 359, 383, 407, 431, 456, 480, 504, 528, 552, 576, 600.
A. B. C. v. D. E. F., 576.
a balanced mind, 408.
a curious verdict, 480.
a good argument, 312.
a legal fog, 438.
accidant insurance, 360.
affidavit extraordinary, 432.
a *prima facie* case, bringing a suit, 48.
a story of Daniel O'Connell, 600.
an absurdity of the law, 311.
an affidavit that is an affidavit, 504.
an apologetic sheriff, 263.
an eye to business, 191.
an old-fashioned judge, 576.
Bailey James E., notice of his death, 192.
bills and bulls, 432.
bower, right bower of trumps, 96.
Mr. Bradlaugh has taken the oath, 263.
branch out lawyer, 311.
brow-beating barrister, 480.
Caligula Massachusetts, 96.
canine inheritance, 72.
charge of a justice to a jury, 576.
conditional pardon of one wrongfully convicted, 336.
considerate, woman pride in a new bonnet, 456.
coroners' juries, 504.
correspondent writes a theatrical story, 408.
court attendants, 311.
curious law, how an oil operator was convicted of a serious crime, 192.
Cushing's manual in court, 432.
damages for mental suffering, quœre, fright? 384.
danger of abridging the long vacation, 72.
Dean Swift's views of lawyers, 576.
de lunatico inquirendo, 360.
diary notes for 1886, 24.
did not known where she would go to, 264.
did not like it, 456.
doomsday book, 480.
dramatic controversy, 336.
dreadful milliner, the, 432.
enforcement of criminal law, 71.
en voyage, 456.

JETSAM AND FLOTSAM—Continued.
extradition of defaulters, 263.
fair spectators in a divorce court, 312
federal legislation against lotteries, 96.
forensic reporters, 384.
gifts causa mortis, 96.
good advice well followed, 407.
good will of a business, 336.
great mother's big war bonnet, 264.
had himself for his attorney, 120.
half lawyer, the, 431.
hangman in Vienna, 480.
hard sense in speeches, 216.
hasty marriage and free speech, 384.
hearings *in camera*, 168.
hospital for poor barristers to learn practice in, 168.
how two "pinafores" stole a horse and were acquitted, 192.
how young lawyers live, 312.
hydrophobia, libel, 456.
imprisonment for debt, 96.
incognoscibility of the law, 576.
indecent assault produced by obscene publications, 47.
injunction—novel use of that process, 407.
insane judges, 504.
insults to French judges, 192.
jokes that are old acquaintances, 336.
judge and the thief, 72.
judge's dictum on a misfit, 480.
judges in an unusual role, 359.
judges who would not wear the robes, 71.
judgments with an "if," 144.
judicial chemistry, 72.
judicial critique on a duel, 552.
judicial fancy, 360.
law Latin in the time of Charles I., 70.
law suits lost and won, 48.
learned and acute, but deaf and cross, 48.
level-headed, 96.
liars who testify—the three kinds, 359.
lien of attorneys, 528.
life insurance and habitual drunkenness, 317.
Lincoln's Inn Gate House, 264.
master and servant, liability of employer for deceiving and overworking child of tender years, 192.
matrimonial troubles, 72.
modest receivers, 48.
more lawyers than dogs, 71.
national veracity, 263.
neophyte and veteran, 72.
no *Locus Penitentiæ*, 480.
oh, the witches! 144.
only one plain mister, 96.
parting his hair in the middle, 432.
payment of members, 456.
personality of counsel, 264.
petty larceny in royal courts, 360.
poetical marriage notice, 528.
prejudice against burglars, 71.
punishment in the olden time, 456.
queer lawsuit, Bees v. Sheep, 240.
religious prosecutions, Mr. Kenny's bill, 528.
remarkable memory, a, 72.
repeal acts, how they should be framed, 312.
resistance to vaccination, 167.
revision of statutes, 168.
right to hiss, the, 167.
sad fate of a policeman, 120.
satirical! 504.
service of process in foreign countries, 48.
short-hand reporters, 384.
something about the legal profession in Chili, 360.
Stead Case, the, 24.
telegraphic cyphers, 504.
tendency of judges to talk too much, 263.
"the dear old thing," 47.
the deputy sheriff and "Com Tatus," 263.
the judge had been there, 168.
the Thissa-Yay, whatever that may be, 71.
tolerance on the bench, 432.
too eager in cross-examining, 96.
trial before a judge, 408.
unique verdict of a coroner's jury, 288.
verdict of a jury in a justice's court, 480.
veteran's of the bench, 71.
vetoing a fee, 71.
way to shorten argument, 288.
Welsh witness, 336.
what is a jury, in San Francisco, 336.
what we are coming to, 71.
wholesale or retail, theft, 408.
will of Shakespeare, 264.
witness who affirms, and swears, 600.
would send him up for stealing a nickel, 191.
worth the money, 552.
young attorneys, 408.
youthful spectator in court, 72.

JOHNSON, CROSBY.
author of leading article on situs of personal property for taxation, 7.
author of article on verdicts in civil cases, their form and substance, 101.
author of leading article on Fence law, 196.

JUDGES.
appointive system, remarks upon, C. E., 145.
how they disagree, remarks upon, C. E. 169.
the judge had been there, J. & F., 168.
in an unusual role, J. & F., 193.
See Constitutional Law, dig., 66.
See Witness, 454.
Territorial, removal of, remarks upon, C. E., 73.
who would not wear the robes, J. and F., 71.

JUDGMENT.
collateral attack for want of notice, what complaint must show, 428.
default, complaint for relief, excusable neglect, 525.
discharge in bankruptcy, omission to plead discharge before judgment, dig., 450.
fraud, remedies, annulment of judgment obtained by fraud, dig., 258.
of another State, when conclusive, transcript, dig. 451.
satisfaction, attorney, dig., 525.
satisfaction, what is the "law of the case," dig., 331.
setting aside for fraud, 572.
when bar to another action, evidence, partnership, dig., 451.
when conclusive, administrator, rulings on these points, dig. 404.
with an if, J. and F., 144.
See Appellate Procedure, dig., 116.
See Practice, 453.

JUDICIAL CHEMISTRY, J. & F., 72.

JUDICIAL DECISIONS.
suppressing publication of, R. D., 25.

JUDICIAL NEPOTISM.
remarks upon, C. E., 218.

JURISDICTION.
attachment, when not void, dig., 69.
of equity over estates of non-resident decedents. Van Dieson Executor v. Banta, ann. cas., 346.
of equity, See Equity, 238.
Federal and State, R. D., 290.
Federal, ruling upon as to validity of transfer by trustee in bankruptcy, dig., 215.
of Supreme Court of the United States, limitations of, dig., 477.
petition determines, appearance by attorney, withdrawal, dig., 451.

JURIES.
good juries in Illinois, 44.

JUROR.
what opinion will disqualify, definition of such opinion, discretion of court in selecting jurors, discharge by court, dig., 451.
See Practice, 358; See Libel, dig., 382.

JUSTICES OF THE PEACE.
William L. Murfree, Sr., review of, 527.

KANSAS BAR ASSOCIATION.
notice of meeting and officers, C. E., 121.
meeting and election of officers, C. E., 26.

KERR, JAMES M.
author of note of Schley v. Pullman Palace Car Co., 231.
KIRLIN, J. P.
author of communication on, "Every man's house his castle." 33.
KNAPP, K. K.
author of leading article on Sleeping cars, 52.
LACHES.
remedies, accounting. dig., 572.
LANDLORD AND TENANT.
defective sewer, measure of damages, rulings on these subjects, dig., 381.
tenant cannot deny landlord's title, evasions of this rule, dig., 549.
use and occupation, evidence of the relation, dig., 428.
LARCENY.
illuminating gas, larceny of illuminating gas, R. D. 123.
law of, R. D., 267.
See Criminal Law, dig., 448.
LAW-BOOK MAKING RUN INTO THE GROUND.
remarks upon multiplicitp of law books, C. E., 145.
LAW LATIN IN THE TIME OF CHARLES, I., J. & F., 70.
LAW SUITS LOST AND WON.
communication by S. W. DONOVAN, cor., 48.
LAWYER.
can a lawyer recover the value of his legal services before a jury of farmers, C. E., 410.
in the English government, C. E., 217.
the true lawyer, the ethics of advocacy, address by Hon. Geo. W. McCrary on this subject, 457.
LAW CONCERNING FARMS.
and farm laborers by Henry Austin, review of, 359.
LAW.
relating to the subject of jurisdiction of courts, by Horace Hawes, review of, 552.
LEARNED AND ACUTE, BUT DEAF AND CROSS.
comment on an English judge, J. & F., 48.
LECTURES.
introductory to the study of the law of the constitution by A. V. Dicey, review of, 407.
LIABILITY.
of directors for deceit, Edgington v. Fitsmaurice, English court of appeals, ann. cas., 81.
LIBEL.
address on the subject by Hon. David J. Brewer, 363.
action by partnership, damages, rulings on that subject, dig., 286.
competency of juror, slander, rulings on these subjects, dig., 382.
death of defendant pending appeal does not abate suit, dig., 452.
describing a man as "an enormous swine," actionable per se, R. D., 14.
Evidence.
privileged communications, State of Tennessee v. Banner Publishing Co., ann. cas., 418.
privileged communications, rulings on that subject, dig., 309.
privileged conmunication in performance of social duty, dig., 239.
words actionable per se, Solverson v. Peterson, S. C. Wis., ann. cas., 14.
LIBELLING A WIFE. C. E. 481.
LIEN.
replevin, mortgage, dig., 598.
See Carriers, dig., 66.
LIFE INSURANCE.
application, agent, when agent of company and when of insured, answers, warranties, fraud, return of premium, Connecticut Life Insurance Co., v. Pyle, 473.
paid up policy, election by party, dig., 451.
void policy notice of limitation of powers, New York Life Ins Co. v. Fletcher, ann cas., 539.
untrue answers that will vitiate a policy but not preclude recovery back of premium, R. D., 366.
LIFE INSURANCE—Continued.
when the failure of one party will excuse the default of the other, dig., 331.
See Insurance. 404, 499, 572.
LIMITATIONS.
statute of, how applied in equity, dig., 309.
statute of, ruling on that subject, dig., 239.
LIONBERGER, ISAAC H.
author of article on risk attending the purchase of certificates of stock, 269.
LIQUIDATED DAMAGES.
See Charter Party, dig., 139.
LIQUOR LAWS.
mandamus, mandamus to compel city council to approve the license bond tendered by a married woman, Amperse v. City of Kalamazoo, R. D., 195.
of Mississippi construed, dig., 162.
LIS PENDENS.
continuous prosecution necessary, dig., 231.
LITTLETON LAW LIBRARY, C. E., 337.
LORD CHANCELLOR OF ENGLAND.
the new incumbent, C. E., 242.
MAINTENANCE.
champerty, aid of near kinsman, not maintenance, dig., 117.
See Assignment, dig., 214.
MALICIOUS PROSECUTION.
what is necessary to sustain the action, dig., 332.
when action accrues, dig., 22.
MANDAMUS.
when not granted at suit of private party, dig., 163.
See Municipal Corporations, dig., 259.
MANDATE.
See Appellate Procedure, dig., 116.
MANITOBA LAW JOURNAL.
suspension of, 25.
MARRIAGE LICENSES, C. E., 265.
MARRIED WOMAN, ann. cas., 133.
partnership, liability of wife, of husband, 452.
equitable and statutory estates, ruling on those subjects, dig., 309.
See Deed, 449; Estoppel, dig., 450.
MARTINDALE, W. D.
author of leading article on Right to inspect public records, 341.
MASTER AND SERVANT.
rulings on that subject, dig.. 332, 333.
ruling breach of contract between, dig., 188.
contract made on Sunday, pleading, action for wages, counter claim, dig., 499.
employees of different masters, fellow servants, ruling on that subject, dig , 286.
liability of employer for deceiving and overworking a child of tender years, 192.
ruling upon, negligence of fellow servant, dig., 404.
negligence, fellow servant, proof necessary that fellow servant was agent of employer. dig., 500.
MAXWELL'S.
Pleading and Practice 4th edition, review of, 47.
MAXWELL SAMUEL.
author of note on forcible entry and detainer, 292.
MAYHEM.
See Criminal Law, dig., 67.
McKEAN, ADDISON G.
author of note on Gidden v. Henry, 39.
author of note on Wilson v. Lawrence, 181.
author of note on Gano v. Fisk, 301.
author of note on State v. O'Niel, 493.
McQUILLIN, EUGENE.
author of note on Manson v. Phoenix etc. Co., dig., 252.
author of note on Miller v. Jones, 397.
author of note on Bennett v. St. Louis Car Roofing Co. 593.
MECHANICS' LIENS.
priorities, parties, dig., 164.

MERRILL, S. S.
author of note on *Re* Ainslie; Swinburn v. Ainslie, 379.

MIHILLS, L. K.
author of leading article on Powers of Bank Directors, 367.

MISNOMER.
See Garnishment, dig., 21.

MISSOURI REPORTS.
vol. 83, review of, 288.

MISTAKE OF LAW.
See Trusts, 526.
name, written instrument, mortgage, validity, mistake of mortgagor's name, 452.
will, estoppel, real estate, compensation for improvements, ruling upon, dig., 404.

MONEY HAD AND RECEIVED.
action to recover money collected under a judgment which is subsequently reversed on error, R. D., 170.

MONEY PAID.
action to recover necessary allegations, allegation of fraud, legal conclusion, dig., 452.

MORTGAGE.
assignee of mortgage, rights of, as against purchaser of judgment, dig., 477.
chattel mortgage, rights of mortgagee, injunction, dig., 525.
consideration extending payment of firm note, burden of proof, dig., 572.
donee of encumbered property, rights of donee, rulings on this subject, dig., 598.
deed absolute in form, effect of, how to be recorded, dig., 452.
effect of quit-claim deed by first mortgagee in possession, dig., 500.
foreclosure, sale under power, title of purchaser, description of land sold, action to redeem, judgment, *res judicata*, dig., 598.
foreclosure, sale, right of purchaser, easement, dig., 499.
foreclosure, leasehold, dispossessing mortgagor, limitations, dig., 572.
record, absolute deed, conveyance of equity of redemption an affirmance of validity of mortgage, dig., 549.
redemption account, dig., 69.
trustee's sale, 22.
when mortgagee not estopped, dig., 118,
See Real Estate, dig., 141; Mistake, 452.

MUNICIPAL BONDS.
when they may be legalized, when opinion of State court not followed Anderson, Exr. v. Township of Santa Anna, ann. cas., 586.
what purchaser must risk, dig., 94.

MUNICIPAL AND QUASI-MUNICIPAL CONTRACTS.
leading article by Geo. W. Warvelle, 148

MUNICIPAL CORPORATION.
action on bonds, authority to issue, dig., 572.
devisee may take devise, for what purpose, dig., 239.
judicial power of, negligence when liable for, dig., 189.
liability of the city for defective sewer, rulings on this subject, dig., 382.
power to accept private trusts, charitable uses, private cemetery. Holifield v. Robinson, ann. cas., 520.
town bonds, negligence, dig., 69.
when cannot be compelled by *mandamus* to levy a tax, dig., 259.
See Corporation, 475.

MYER'S FEDERAL DECISIONS, VOLS. VIII AND XII.
review of, 262.

NAMES OF PERSONS.
part I., leading article by W. W. Thornton, 220.
part II., leading article by W. W. Thornton, 244.

NEGLIGENCE.
action for injuring animal, duty of owner to prevent further injury, dig., 572.
contributory negligence, ringing bell at crossing, looking both ways, dig., 405.
railway, damages for running over a dog, remarks upon, D. E., 97.
evidence of, rulings, dig., 164.

NEGLIGENCE—Continued.
employer providing safe place for employee, municipal corporations, ruling as to contributory negligence, dig., 429.
fellow-servant, ruling upon, dig., 525.
hidden defect, broken rail. Anthony v. Louisville, etc. Co., ann. cas., 507.
keeping machine in order, visitor without invitation, dig., 452.
nuisance, landlord and tenant, parent and child, fellow servant, master and servant, dig., 477, 478.
liability of master for injury of servant. Russell v. Tillotson, ann. cas., 446.
master and servant, fellow servants, assent of representative of master, dig., 598.
obstruction of sidewalk, ruling on that subject, dig., 259.
respondeat superior, partnership, ruling upon, dig., 118.
rights of traveller, rulings on these subjects, dig., 357.
unskillful employee, conductor, duties of, evidence, rulings, dig., 428.
setting fire to dwelling, proximate cause, rulings on that subject, dig., 333.
See Fraud, 187; Municipal Corporation, 189.

NEGOTIABLE NOTES SECURED BY MORTGAGE.
rights of assignee either by indorsement or delivery, leading article by Wm. M. Rockel, 130.

NEGOTIABLE PAPER.
rulings upon the process of fixing liability on parties, laches, evidence, vendor and vendee, misrepresentation of quantity of land, dig., 549.
partnership, promissory note, laches, waiver, dig., 478
bona fide purchaser, ruling on these subjects, dig., 405.
guarantor, usury, dig., 42.

NEW HAMPSHIRE.
the shortest and the slowest, notice of tardy issuance of New Hampshire reports, C. E., 3.

NEW YORK CITY BAR ASSOCIATION.
resolutions introduced into by David Dudley Field, C. E., 25.

NEW TRIAL.
See Fraudulent Conveyance, 450; Practice, 453.

NONSENSE OF REASON.
remarks upon. Lamb v. Ryan, Crawford v. Dilke, C. E., 317.

NOT WITHOUT HONOR SAVE IN HIS OWN COUNTRY, J. & F., 169.

NOTES OF RECENT DECISIONS, 3, 27, 50, 75, 98, 123, 146, 170, 194, 218, 243, 266, 289, 314, 338, 365, 385, 411, 434, 459, 482, 506, 530, 554, 579.

NOTE.
to Solverson v. Peterson, anonymous, 16.
of Gregory v. New York, etc. R. Co., by G. D. Bantz, 114.
on Glenn v. Semple, by Gideon D. Bantz, 185.
of Osborne v. Baker, by H. Campbell Black, 65.
to Walker v. Walker, by H. Campbell Black, 255.
to The New Orleans Gas Light Company v. The Louisiana Light and Heat Producing Company, by H. Cambell Black, 204.
on Blain v. Brady, by S. G. Croswell, 37.
of Jenkins v. Wood, by W. F. Elliott, 62.
on Glidden v. Henry, by Addison G. McKean, 39.
of Wilson v. Lawrence, by Addison G. McKean, 181.
to Schley v. Pullman Palace Car Co., by James M. Kerr, 231.
of Edgington v. Fitzmaurice, by Seymour D. Thompson, 90.
on Chapman v. Dougherty, by W. W. Thornton, 158.
on Kniel v. Edleston, by David Stewart, 133.
to Gans v. Dabergott, by John H. Stewart, 19.
of Lamb v. Ryan, by John H. Stewart, 155.
on Lewis v. Champion, by John H. Stewart, 229.

NOTICE.
constructive, purchaser, *pendente lite*, fraudulent conveyance, subrogation, rulings on these subjects, dig. 429.
of loss, See Insuranca, dig., 67.
constructive, See Record, dig., 42.

NUISANCE.
negligence, landlord and tenant, respective liability for injuries caused by unsafe condition of demised premises. Wolf v. Kirkpatrick, ann. cas., 516.

NULLITIES.
proceeding to appoint guardian, notice, dig., 452.
OATHS.
a bishop pleading for the abolition of, remarks upon, C. E., 109.
OBLIGATIONS.
de bonis testatoris and de bonis propriis. Jenkins v. Wood, S. Jud. Ct. Mass., ann. cas., 61.
OFFICIAL BONDS.
bond of executor, surety, obligation, constructive loan, failure to collect, dig., 452.
OFFICE AND OFFICER.
salary, *de jure* officer may recover salary of *de facto* officer when, dig., 549.
OLEOMARGARINE.
some more laws, corresp., 141.
ORIGIN AND UTILITY OF CASE LAW, C. E., 529.
PARENT AND CHILD
See Agency, dig., 161.
PARTITION.
action maintainable only by party in possession, dig., 333.
PARTIES TO MORTGAGE FORECLOSURE.
review of, 335.
PARTNERSHIP.
accounting, proof of, ruling as to individual debts, dig., 525.
chattel mortgage, creditors, individual claim, liability of partners in non-commercial firm, dig., 453.
dissolution by death, new firm, etc., rulings on these subjects, dig., 382.
dissolution, notice, rulings on this subject, dig., 334.
evidence of, dig., 452.
limited, special partner, change of capital, evidence, illegal preference, dig., 478.
loan, ruling on partnership liabilities, dig., 286.
one firm under several names, assignment for benefit of creditors, partial assignment is valid, dig., 500.
participation in profits does not constitute, dig., 525.
rulings upon that relation, dig., 357.
title, conversion, notice parties, rulings on these points, dig., 429.
See Interest, dig., 450.
See Married Woman, dig., 452.
PASSENGERS BAGGAGE, C. E., 505.
PATENTS.
ruling on that subject, dig., 239.
for lands, See Equity, dig., 118.
PATENTABILITY OF MECHANICAL PROCESSES.
leading article by B. F. Rex, 294.
PENALTY.
See Charter Party, dig., 139.
PENNSYLVANIA COUNTY COURT REPORTS.
new publication. C. E., 2.
PIERCE, J. O.
author of note on annotated case of Knights of Honor v. Naim, 274.
PINGREY, D. H.
author of article on powers of municipal corporations, 318.
PLEADING.
admissions in, See Evidence, dig., 93.
by-laws of insurance corporation, arbitration, rulings on these subjects, dig., 430.
POACHERS ON PROFESSIONAL PRESERVES, C. E., 313.
POEMS OF THE LAW.
review of, 406.
POWERS OF BANK DIRECTORS.
leading article, by E. K. Mihills, 367.
POWERS OF MUNICIPAL CORPORATIONS.
leading article by D. H. Pingrey, 318.
POWER OF TRIAL COURT.
to regulate its course of business, sanity, criminal liability of the weak-minded, dig., 453.
PRACTICE.
continuance, surprise, evidence, new trial, principal and surety, dig., 526.
PRACTICE—Continued.
evidence, witness, mode of examining witness, dig., 500.
evidence, ruling on that subject, dig., 259.
evidence, juror biased, unfriendly to attorney, rulings on these subjects, dig., 358.
new trial, judgment, lien, equity, dig., 453.
trial, jury, what papers may be taken to jury room, notice, evidence, dig., 465.
unsworn statement of counsel, R. D., 437.
See Negligence, dig., 405.
PRESIDENTIAL SUCCESSION LAW, C. E., 97.
PRESIDENTIAL SUCCESSION, C. E., 458.
PREJUDICE AGAINST BURGLARS, J. & F., 71.
PRESUMPTION.
See Criminal Law, dig., 448.
PRINCIPAL AND SURETY.
action against surety on sheriff's bond, dig., 525.
contribution, voluntary payment, who are co-sureties, promissory note, ruling on that subject, dig., 550.
PRINCIPLES OF COMMON LAW.
review of, dig., 406.
of law relating to discharge of contracts, review of, 311.
PRINCIPLES OF SALE.
review of, 311.
PRIVATE CORPORATIONS.
article upon, 361.
PRIVATE INTERNATIONAL LAW.
Gregory v. New York, etc. Co., ann. cas., 110.
PRIVIES.
See Record, dig., 42.
PRIVILEGED COMMUNICATION.
See Libel, dig., 239.
See Attorney, dig., 66.
PROBABLE CAUSE.
See Malicious Prosecution, dig., 332.
PROCEDURE.
in Federal courts, ruling on, dig., 189.
PROCESS.
service of in foreign countries, C. E., 48.
PROHIBITORY LIQUOR LAWS.
constitutional law, law prohibiting the manufacture of intoxicating liquors are unconstitutional unless compensation is made to existing manufacturers, R. D., 171.
PROHIBITION.
See Liquor-Laws, dig., 162.
PROMISSORY NOTE.
See Principal and Surety, dig., 550.
surety, subrogation, replevin, dig., 478.
PROMOTION.
deserved promotion, colonels and generals, editorial reply to letter, C. E., 23.
PROOF.
required of proponent beneficiary, or writer of a will, leading article by John F. Burke, 172.
PROXIMATE CAUSE.
See Negligence, dig., 333.
PUBLIC LANDS.
mineral, when occupier has no right to compensation for improvements, dig., 118.
occupancy gives no title against the United States, dig., 118.
what is conclusive on the subject of settlement, dig., 164.
See Equity, dig., 118.
PURCHASING MORTGAGED REAL ESTATE.
leading article by Charles Burke Elliott, 460.
QUEER LAW SUIT, J. & F., 240.
QUERIES, 23, 45, 95, 119, 142, 190, 215, 240, 261, 287, 310, 334, 358, 382, 406, 430, 454, 479, 502, 527, 574, 590.
QUERIES ANSWERED, 23, 45, 95, 119, 142, 165, 190, 261, 287, 310, 335, 359, 382, 406, 454, 479, 502, 527, 574, 599.
QUESTION OF A DOG TAX, J. & F., 73.

RAILROADS.
not liable for death of wounded prisoner whose death was hastened by transportation on train, dig., 286.
land grants of, when forfeited, dig., 118.
contract, interpretation of, dig., 70.
negligence, contributory, when railroad must avoid it, failure to comply with city ordinance, constitutional law, ruling on, dig., 550.
negligence, dog on track, duty of locomotive to get out of way of dog, C. E., 216.
Railroad Companies and Express Companies.
article upon, 337

REAL ESTATE BROKERS.
their right to commission, leading article, by H. Campbell Black. 126,
See Adequacy, dig., 214.

REAL ESTATE.
repairs, equitable lien, dig., 500.
replevin, title to lands from which logs are cut, right to possession, dig., 478.
sale of, mortgage, ruling upon, dig., 141.
See Will, dig., 502.

RECEIVERS.
appointment of, purpose thereof, removal, discretion of the court, dig., 560.
modest receivers, J. & F., 48.

RECENT DECISIONS.
notes of, 3, 27, 50, 75, 98, 123, 146, 170, 194, 218, 243, 266, 289, 314, 338, 365. 385, 411, 434, 459, 482, 506, 530, 554, 579.
breach of contract by anticipation, Dingley v. Oler, 434.

RECENT DECISIONS, NOTES OF.
accident policy, suicide, 436.
account stated, parties, estoppel, 386.
Alaska, Indian country, 482.
appellate procedure, 28.
appellate procedure, restitution, 218.
captured and abandoned property, 243.
carriers, of goods, negligence, 147.
codification, need of, 51.
constitutional law, commerce, 289.
constitutional law, inter-State travel, taxation, 385.
constitutional law, militia, 411.
contract, breach of, by anticipation, 434.
contract, consideration, 6.
corporations, directors, trustees, 194.
corporation, liability of promoters, 98.
corporations, municipal, 340.
criminal law, indictment, 27.
divorce, *a mensa et thoro*, 532.
equity, cancellation, 219.
every prisoner his own witness, 314.
execution, law of, 315.
executors and administrators, 50.
habeas corpus, appeal, error, 51.
homicide, retreat to the wall, 506.
husband and wife, conveyance in fraud of marital rights, 365.
injunction, irreparable injury, 50.
internal revenue, municipal corporation, 579.
jurisdiction, Federal and State. 290.
larceny, illuminating gas, 123.
larceny, the law of, 266.
life insurance, accident policy, 413.
life insurance, untrue answers, 366.
liquor laws, mandamus, 195.
master and servant, negligence, 243.
negligence, hidden defect, broken rail, 507.
practice, statements of counsel, 437.
prohibitory liquor laws, 171.
specific performance, 100.
statute, construction, inadmissible testimony, 146.
statute of frauds, 172.
statute of limitations, prescription, limitation, difference, 530.
telegraph companies, negligence, 98.
telegraph company, non-delivery of message, 147.
trade-mark, injunction, 6.
trial, misconduct of counsel, 170.
trial, verdict, mistake, 171.
waiver, doctrine of, 29.

RECENT DECISIONS, NOTES OF—Continued.
"warranted satisfactory," 459.
waters and water-courses, riparian rights, 554.
will, specific bequest, 3.
will, testamentary capacity, 338.
will, unborn children, 75,

RECENT PUBLICATIONS.
reviews of, 46, 70, 143, 166, 262, 288, 310, 335, 359, 383, 406, 430, 455, 479, 503, 527, 552, 575, 600.
doctrine of public policy by Elisha Greenhood, review of, 575.

RECORD.
See Evidence, dig., 67.
recording acts, notice, constructive, extends to privies, dig., 42.

REDEMPTION.
See Mortgage. dig., 69.

REFORMATION OF CONTRACT.
See Equity, dig., 356.

RELATION.
of railroad companies to express companies. Memphis, etc. Co. v. Southern Express Co., S. C. U. S., in full, 349.

RELEASE.
of property held as surety, leading article by Adelbert Hamilton, 414.

REMAINDERMAN.
when he may maintain action, dig., 186.

REMEDY BY EXECUTION.
fraudulent conveyances, leading article by Gideon D. Bantz, 123.

REMOVAL OF CAUSES.
colorable assignment, jurisdiction, removal, dismissal, dig., 526.
citizenship, jurisdiction, dig., 526.
habeas corpus, Kurtz v. Moffit, ann. cas., 370.
ruling upon, dig., 189.

REPEAL.
of statutes, effect of, See Statute, dig., 42.

REPLEVIN.
tenants in common may maintain against each other, dig., 119.

REPORTERS AND PUBLISHERS.
remarks upon litigation between, C. E., 241.

REPORTS.
of cases decided in the Court of Chancery of New Jersey, Vol. 13, review of, 527.

REPUDIATION.
of release under assignment, consenting creditor, failing to get his share, 453.

RESCISSION.
See Sales, dig., 140.

RESISTANCE.
to vaccination laws, C. E., 167.

RESPONDEAT SUPERIOR.
See Negligence, dig., 118.

REVISION OF STATUTES, C. E., 168.

REX, B. F.
author of leading article on patentability of mechanical processes, 294.

RIGHT BOWER OF TRUMPS, J. & F., 96.

RIGHTS OF CHILDREN.
in *ventre sa mere*, R. D., 75.

RIGHT OF SET OFF.
as against holder of a note endorsed to him after maturity. leading article by W. W. Thornton, 177.

RIGHT TO HISS, J. & F., 167.

RIGHTS AND REMEDIES.
of remainderman, Walker v. Walker, S. C. N. H., ann. cas. by H. Campbell Black, 252.

RIGHT TO INSPECT PUBLIC RECORDS.
leading article by W. D. Martindale, 341.

RIPARIAN OWNERS.
See Waters and Water Courses, dig., 382.

RISK.
attending purchase of certificates of stock, leading article by Isaac H. Lionberger, 269.

ROCKEL, WM. M.
author of *bona fide* holder of negotiable paper, what is bad faith, 437.
author of leading article on negotiable notes secured by mortgage, right of assignees either by indorsement or delivery, 130.
RULES OF PRACTICE.
on the taking of depositions, leading article by H. Campbell Black, 561.
RUSSELL, W. H.
author of leading article on declaration of pain and suffering, 509.
SALE.
of land, rescission, vendor's power of rescission, caprice, dig., 70.
order in language unfamiliar to signer, parol evidence, dig., 550.
of personal property, rescission, ruling upon, dig., 140.
stoppage *in transitu*, delivery, actual or constructive possession, carrier's lien, holding goods for buyer, dig., 501.
vesting of title, delivery, payment, dig., 500.
SELF DEFENCE.
retreat to the wall, State v. Donnelly, R. D., 506.
SET-OFF AND COUNTER-CLAIM.
claims in different rights, dig., 526.
SHELLEY'S CASE.
rule in, See Will, dig., 334.
SHERIFF.
return of, amendment of, 165.
SHERIFF'S SALE.
power of court to set it aside by a summary proceeding, practice, dig., 430.
SINKING FUND.
law of, remarks upon, C. E., 121.
SITUS OF PERSONAL PROPERTY FOR TAXATION.
corporeal property, goods in transit, imports and exports, boats and vessels, incorporeal and intangible property, state and municipal bonds, credits, stock in corporations, leading article by Crosby Johnson, 7.
SLANDER.
privileged communication, ruling on, dig., 382.
words actionable, *per se*, words spoken in foreign language, ruling as to foreign tongues, malice and special damage, dig., 550.
SLEEPING CARS.
leading article upon law concerning, by K. K. Knapp, 52.
SOLICITOR'S NEGLIGENCE.
article on, from *London Law Times*, 60.
SOUTH CAROLINA BAR ASSOCIATION.
notice of its meeting, C. E., 121.
SPECIFIC PERFORMANCE.
ruling upon, dig., 141.
sales of land, when time is of the essence of contract, in case of the destruction of a building by fire, R. D., 100.
See Equity, dig., 356.
SPIRITUALISM.
See Will, dig., 502.
STARE DECISIS.
treatise on, review of, 310.
STATE v. BALLER.
note upon, R. D., 27.
STATUTE.
code, medical association, penalty prohibition, dig., 526.
construction of, mandatory or directory, intoxicating liquors, ruling on these points, dig., 405.
repeal of, effect of, dig., 42.
interpretation, testimony of a member of the legislature not admissible as to meaning of statute, notes Bedeau v. U. S., R. D., 146.
STATUTE OF FRAUDS.
parol sale of land, rights of vendee, parol gift of land, rights of donee, dig., 430.
Osborne v. Baker, ann. cas., 63.
agreement for to be performed within a year, contract for employment not to be performed within a year void when signed by employer only, R. D., 172.
STATUTE OF FRAUDS—Continued.
See Fraud, dig., 548.
STATUTE OF LIMITATIONS.
constitutional law, distinction between prescription of title and limitation of remedy, Fourteenth Amendment, vested rights, Campbell v. Holt, R. D., 530.
STEAD CASE, C. E., 24.
STEWART, DAVID.
note on Kniel v. Egleston, 133.
STEWART, JOHN H.
author of note on Lamb v. Ryan, 155.
author of note on Lewis v. Champion, 229.
author of article on jurisdiction of equity over estates of non-resident decedents, 346.
author of note on Gilmore v. Tuttle, 425.
note to Gans v. Dabergott, 19.
STOCKHOLDERS.
statute of limitations, Glenn v. Semple, S. C. Ala., ann. cas., 182.
STREETS.
See Municipal Corporation, dig., 239.
STUDENT'S KENT.
by E. F. Thompson, review of, 527.
SUBROGATION.
president of corporation, payment of mortgage out of private funds, dig., 501.
SUBSCRIBERS.
how to lose, E. E., 169.
SUBSCRIPTION.
mutual promise binding after expenditures have been made, dig., 500.
SUNDAY LAW.
ruling on that subject, dig., 572.
SUPREME LODGE.
which is not supreme, remarks upon, C. E., 97.
SURETY.
of sheriff, not liable when sheriff is substituted as trustee, dig., 526.
TABLE OF CASES.
article on this subject, C. E., 482.
TAXATION.
cloud upon title, bill to set aside tax deeds as such clouds, dig., 189.
North Pacific Railway land grant, when not subject to taxation, dig., 260.
ruling upon, as affecting insurance companies, dig., 190.
statute, interpretation of, dig., 165.
See Equity, dig., 238.
TAYLOR v. CAREW MANUFACTURING COMPANY.
note on, by E. S. Whittemore, 136.
TELEGRAPH COMPANIES.
negligence, condition of blank requiring message to be repeated no excuse for delay, R. D., 98.
non-delivery of message, wounded feelings as an element of damages, non-delivery of message containing notice of funeral of deceased relative, R. D., 147.
TELEPHONE TESTIMONY.
article upon that subject, 433.
TELEPHONE.
some points ruled in telephone law, leading article, by Wm. G. Whipple, 33.
TENANTS IN COMMON.
See Replevin, dig., 119.
TENDER.
leading article upon by M. W. Hopkins, 389.
TESTAMENTARY CAPACITY.
contested will, what evidence necessary, opinion evidence of those not experts, R. D., 338.
THANKSGIVING OFFERING.
addendum to, corresp., 43.
THOMPSON, SEYMOUR D.
author of note on Edgington v. Fitzmaurice, 90.
THORNTON, W. W.
author of leading article on right of set-off as against holder of a note endorsed to him after maturity, 177.
author of note on Chapman v. Dougherty, 156.
author of leading article on names of persons, 220, 244.
author of note to Bibb v. Hunter, 396.
author of leading article on election of remedies, 533, 556.
TICKET OF LEAVE SYSTEM.
bill for in Kentucky, remarks upon, C. E., 145.

TOUTERS AND SHYSTERS IN ST. LOUIS.
comments on this class of persons by an attorney, editorial remarks, C. E., 22.
TRADE-MARK.
injunction, "Sweet German Chocolate" enjoined as an infringement of "German Sweet Chocolate," R. D., 6.
TREATISE.
on the law of taxation, by Thomas M. Dooley, review of, 503.
on the law of receivers, by James L. High, review of, 431.
TRESPASS.
to land, action, right to follow and re-take property under its new form, dig., 573.
action of, what necessary to maintain, dig., 453.
quare clausum fregit, title not involved, possession will sustain action, ruling as to highways, dig., 550.
TRIAL.
conduct of, dig., 20.
of Daniel Giddings, review of, 143.
instructions, when not error to refuse, dig., 42.
misconduct of counsel, use of a diagram in closing argument, R. D., 170.
of title, by Sedgwick and Wait, treatise on, review of, 455.
verdict re-committing to jury to correct mistake, R. D., 171.
TRUST.
acceptance, what is an acceptance, dig., 405.
Egmity.
jurisdiction, gilmore v. Tuttle, ann. cas., 423.
power of sale, form of words, what "pay over" implies dig., 453.
resulting trust, purchase of land by agent, dig., 501
resulting trusts, Bibb v. Hunter, S. C. Ala., ann. cas., 393.
TRUSTS AND TRUSTEEE.
trustee delegating authority, sale thereunder void, equity will not relieve against mere mistake of law, dig., 526.
trustee in railroad mortgage may appeal, dig., 187.
power of appointment ruling on that subject, dig., 260.
removal of husband as trustee, power of chancery court to act, whether the estate is equitable or statutory, dig., 573.
sale of, See mortgage, dig., 22.
See Assignment,., 60; Ejectment, 161; Will; dig., 573.
TWICE IN JEOPARDY, C. E., 409.
UNIFORM CODE OF PROCEDURE.
a move in the right direction, article upon, 529.
USAGE.
See Banks, dig., 137.
USE.
of christian names in legal proceedings, leading article by H. Campbell Black, 487.
USURY.
See negotiable paper, dig., 42.
VALUE RECEIVED.
Osborne v. Baker, S. C. Minn., ann. cas., 63.
VANFLEET, J. M.
author of leading article on "administration of the estate of a living person," 484.
VARIANCE.
See Civil procedure, dig., 139.
VENDOR AND VENDEE.
contract signed by one party, statute of frauds, rulings on these subjects, dig., 358.
conveyance subject to encumbrance, express agreement to pay mortgage is not necessary if vendee has notice, dig., 551.
reservation of timber, right to enter and cut, replevin, reservation in deed, notice, dig., 501.
ruling on that subject, specific performance, defect of title executory contract. mistake, dig., 573.
when vendor not surety of his vendee in respect of mortgage debt, See Mortgage, 118; Negotiable Paper, dig,, 549.
VENDOR AND PURCHASER.
damages of non fulfillment of contract, leading article by Geo. W. Warvelle, 152.
VERDICTS IN CIVIL CASES.
their form and substance, leading article by Crosby Johnson, 101.
VERDICT.
special, See negligence, dig., 405.
VESTED INTERESTS.
when vested, when contingent, dig., 42.
WAITE.
chief justice, in England, letter of Lord Coleridge, 49.
WAREHOUSEMAN.
See Witness, dig., 501.
WARRANTY.
breach of, judgment by agreement, conclusive evidence of, dig., 448.
"WARRANTED SATISFACTORY IN EVERY RESPECT".
note of recent decisions on this subject, McClure v. Briggs, 459.
WARVELLE, GEO. W.
author of vendor and purchaser, damages for non-fulfillment of contract, 152.
WASHINGTON AT THE BAR, 242.
WARRANTY.
See Agency, dig., 161.
WATERS AND WATER COURSES.
dam, grant of easement, right of remote grantee, right to maintain mill-dam at original height. dig., 573.
riparian owners rights of, rulings on these subjects, dig., 382.
riparian rights, corporations diverting water, constitutional law, eminent domains, Lux v. Haggin, R. D., 554.
WEEKLY DIGEST OF RECENT CASES, 20, 42, 66, 92, 116, 137, 161, 186, 214, 237, 256, 284, 308, 330, 355, 380, 401, 426, 448, 474, 498, 522, 545, 570, 594.
WHIPPLE WM. G.
author of "Some Points Ruled in Telephone Law," leading article, 33.
WHITMORE, E. S.
author of leading articles on contempt of court, 464.
author of note on Taylor v. Carew Manufacturing Company, 136.
WILL.
ante-nuptial agreement, rulings on powers that may be conferred by will, revocation of will by marriage, not operative on appointment, dig. 551.
appointment, difference, dig. 454.
children in ventre sa mere, when devise to children includes child in ventre sa mere, 75.
construction of, apportioning reversionary interests, dig. 286.
construction, devise, dig. 526.
construction, technical meaning of the word "heirs," rule in Shelley's case, dig. 334.
construction of, trust partition, upon the death, intention, rulings, dig. 406.
devise, construction of, mortgage, foreclosure, forfeture, dig. 551.
"die without lawful issue." These words refer to death of legatee before that of testator, dig. 502.
equitable conversion of land into money, dig., 42.
interpretation, testator's intention, trust, resulting trust, expenditures for improvements, dig., 501.
legacy, attaching creditor of legatee, allowance to accountant, when reviewed, dig., 502.
legacy, failure of assets, deficiency how borne, trust, trustee, duty of trustee, dig., 573.
life estate, landlord and tenant, condition, public policy, innocent purchaser, rulings on these subjects, dig., 358.
real estate, when converted into personalty by will, dig., 502.
specific bequest, interpretation, recent decisions upon, whether construed to refer to property existing at the time of making the will or at the time of the testator's death, 3.
undue influence, spiritualism, dig., 502.
WITNESS.
compelling party to answer written interrogatories, warehouseman, dig., 501.
competency of judge, being witness, as judge, dig., 454.
contract with deceased party, how proved, executors and administrators, dig., 502.
when witness not under the rule may testify, dig., 257.
WILLIAMS,
on real property, 6th American edition, review of, 143.
WOODS
railway law, remarks upon, C. E., 97.
WRIT OF ERROR,
to U. S. S. Ct. jurisdiction ruling on that subject, dig., 260.